United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

75-6129

United States Court of Appeals

FOR THE SECOND CIRCUIT

RONALD H. WHELAN, JOHN J. BRODERICK, EDWARD J. BURNS, EDWARD J. GASPARTICH, WILLIAM F. LYNCH, ANTHONY J. ROSS, HENRY O. HANRAHAN, RICHARD LIETO, FRANCIS B. MCCOMB, FRANK B. JONES, BENEDETTO RUNCO, GEORGE S. BRITO, JOHN E. CONDON, JOHN E. HARKINS, JOHN B. JONES, WILLIAM F. KEHOE, RICHARD D. LANG, TIMOTEO MONGE, WALTER R. PRICE, ALFRED J. SEEVERS, GUNNAR O. STRAND, JOHN A. MUELLER, MARC LANG, BENEDETTO LEO, HARATIO N. AGGARD, JOHN S. FORTE, ERICH GEHM, JOSEPH G. GLENNON, CONSTANTINO L. LEONE, SABATO A. MESSINA, FRANK J. MONDELLO, HENRY G. NIELSEN, HAROLD M. OLIVER, SIMON R. ROSENTHAL, JOSEPH J. SCHULTZ, JOHN R. SHARPE, THOMAS SOLOMETO, JR., ANTONIO SPINELLI, MARIO RUNCO, FREDERICK H. MALLETT, ROBERT M. DEGARLAND, HENRY BUTLER, HERMAN SEIBEL, JAMES MULVANEY, and RICHARD DARE,

Plaintiffs-Appellants,

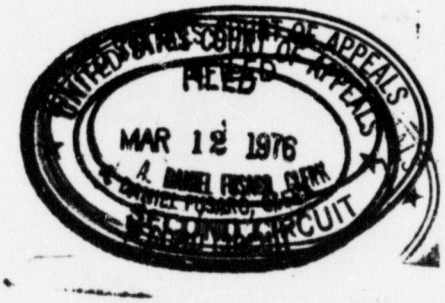
—against—

CLAUDE S. BRINEGAR, Secretary of the Department of Transportation, ADMIRAL CHESTER R. BENDER, Commandant of the U. S. Coast Guard, and ROBERT E. HAMPTON, JAYNE SPAIN and L. J. ANDOLSEK, constituting the members of the U. S. Civil Service Commission,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX



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DOCKET ENTRIES

CIVIL DOCKET

UNITED STATES DISTRICT COURT

JUDGE:

ATTORNEYS

For plaintiff:

HARRY GROSSMAN
515 Madison Ave.
N.Y.C.

DONALD H. WHELAN, JOHN J. BRODERICK, RICHARD J. BURNS, EDWARD J. GASPARTICH, WILLIAM F. LYNCH, ANTHONY J. ROSS, HENRY O. HANRAHAN, RICHARD LIETO, FRANCIS B. McCOMB, FRANK B. JONES, BENEDETTO RUNCO, GEORGE S. BRITO, JOHN E. CONDON, JOHN E. HARKINS, JOHN B. JONES, WILLIAM F. KEHOE, RICHARD D. LANG, TIMOTEO MONGE, WALTER E. PRICE, ALFRED J. SEEVERS, GUNNAR O. [illegible]LAND, JOHN A. MUELLER, MARC LANG, BENEDETTO [illegible]O, HARATIO N. AGGARD, JOHN S. FORTE, ERICH [illegible]EM, JOSEPH G. GLENNON, CONSTANTINO L. [illegible]LONE, SABATO A. MESSINA, FRANK J. MONDELLO, HENRY G. NIELSEN, HAROLD M. OLIVER, SIMON R. ROSENTHAL, JOSEPH J. SCHULTZ, JOHN R. SHARPE, THOMAS SOLOMETO, JR., ANTONIO SPINELLI, MARIO RUNCO, FREDERICK H. MALLETT, ROBERT H. [illegible]EGARLAND, HENRY BUTLER, HERMAN SEIBEL and JAMES MULVANEY, and RICHARD DARE add'l 12/4/73

Plaintiffs,

-against-

Claude S. Brinegar added 12/4/73
PAUL BRINNGARD, Secretary of THE DEPARTMENT OF TRANSPORTATION, ADMIRAL CHESTER R. BENDER, Commandant of THE UNITED STATES COAST GUARD and ROBERT E. HAMPTON, JAYNE SPAIN and L. J. ANDOLSEK, constituting the members of THE UNITED STATES CIVIL SERVICE COMMISSION,

Defendants.

STATISTICAL RECORD	COSTS		
J.S. 5 mailed X	Clerk		
J.S. 6 mailed ✓	Marshal		
Basis of Action: RE: PAY & SALARIES OF PLT'FS.	Docket fee		
	Witness fees		
Action arose at:	Depositions		

Docket Entries

RONALD H. WHELAN ET-AL VS. PAUL BRINNGARD. ET-AL

JUDGE: METZ

73 CIV. 2

DATE	PROCEEDINGS	Judge
6-26-73	Filed Complaint. Issued Summons.	
8-10-73	Filed stip. and order that the time for defts. to answer complaint is ext. from Sept. 11,1973 until Oct. 11,1973.So ordered, Metzner, J.	
7/30/73	Filed Summons and entered Marshal's returns served on Paul Brinngard, by Grossman 7/2/73, served on Adm.Chester R.Bender, by Grossman,7/2/73, served on Robert Hampton, by Grossman, 7/2/73, served on Jayne Spain, by Grossman, 7/2/73, served on L.J.Andolsek, by Grossman, 7/2/73	
10-15-73	Filed stip. and order that the time for defts. to answer complaint is ext. to Oct. 19,1973. So ordered,Metzner, J.	
10-19-73	Filed Defts. ANSWER, to the complaint.	PTC
12-4-73	Filed stip. and order that the name of RICHARD DARE having been inadvertently omitted be and is hereby added as an addtl. pltf. in the above entitled action and that the said name be and the same hereby is added to the caption and as an addt. pltf. to paragraph marked 6th of the complaint. So ordered,Metzner,J.	
12-4-73	Filed stip. and order that the name of CLAUDE S. BRINEGAR as Sec. of Transportation and is substituted for the name of Paul Brinngard having been erroneously listed as Sec. of Transportation both in the caption of the above action as well as in paragratph 7 of the complaint. So ordered,Metzner,J.	
Jan-17-74	Filed affdvt. and plaintiffs notice of motion to dismiss affirmative defenses - ret. 1-28-74	
Jan-17-74	Filed plaintiffs memorandum of law in support of motion to strike affirmative defense contained in the answer of defendants.	
Jan-24-74	Filed plaintiffs supplemental affdvt. in opposition support of motion to dismiss affirmative defense.	
Feb-19-74	Filed deft's affdvt. and notice of motion for summary judgment - ret. (no date)	
Feb-19-74	Filed defts memorandum of law in support of motion for summary judgment.	
Feb.22-74	Filed stip. and order that the time of defts. to answer pltfs. motion to dismss the defts. affirmative defenses is ext. to Feb.19,1974. So ordered, Metzner,J	
Mar-11-74	Filed plaintiffs memorandum of law in opposition to motion of defendants for summary judgment.	
Mar-11-74	Filed plaintiffs reply affdvt. of Ronald H. Whelan in support of plaintiff's motion and in opposition to defendants motion	
Mar-11-74	Filed plaintiffs reply affdvt. of Harry Grossman in support of plaintiff's motion and in opposition to defendants motion.	
Mar-25-74	Filed deft's affdvt. in additional support of deft's motion and in opposition to pltf's motion to strike deft's affirmative defense	
Mar-25-74	Filed plaintiffs statement pursuant to Rule 9(g)	
Mar-26-74	Filed OPINION #40644...Plaintiff's motion to strike the first affirmative defense is granted. The motion to strike the 2nd affirmative defense is also granted. Defendants' motion for summary judgment is denied. So ordered. -- Metzner, J. m/n	
Jun-21-74	Filed pltf's notice to take depositions of deft. on 7-16-74	
Jun- -74	Filed defendants affdvt. and notice of motion for a protective order.	
Jun-10-74	PRE-TRIAL CONFERENCE HELD BY Metzner, J.	
Jul-1-74	Filed pltf's memorandum of law in opposition to motion for protective order etc.	
Jul-10-74	Filed Memorandum of Law in opposition to motion for protective	
Oct.30-74	Filed govts. reply memorandum of law.	

Docket Entries

Wheelan v. Claude S. Brinegar
73 CIV 2819 page 3 Judge Metzner

DATE	PROCEEDINGS
-12-7[illegible]	Filed OPINION #41569...For reasons stated herein, defts motion for a protective order shall be deemed to have been denied. So ordered. -- Metzner, J. m/n
[illegible]-75	Filed order that the motion of deft. is granted for a protective order, that no discovery be had of Civil Service Commission is granted; and it is further ordered that the notice of taking deposition upon oral questions of the deft. Civil Service Commission, dated 1-20-75 is hereby vacated. - Metzner, J.
[illegible]-75	Filed pltf's notice to take depositions of deft. on 1-30-75
[illegible]-75	Filed letter by U.S. Dept. of Justice dated 12-20-74 to Judge Metzner letter of U.S. Civil Service Commission, Wash. D.C. to Hon. Paul J. [illegible] US Atty, dated 12-18-75.
[illegible]	PRE-TRIAL CONFERENCE HELD BY Metzner, J.
[illegible]-75	NON-JURY TRIAL begun before Metzner, J. and concluded. Decision reserved.
[illegible]	Filed pltf's notice to produce
[illegible]75	Filed defts post trial memorandum of law.
[illegible]	Filed Transcript of record of proceedings, dated Feb 20-1975
[illegible]-75	Filed OPINION #43329...Plaintiffs have failed to show lack of substantial [illegible] to support the Commission's rulings. JUDGMENT FOR THE DEFENDANTS. Metzner, J. m.n.
[illegible]-75	Filed stip. and order that any and all documents previously [illegible] to the court are deemed to be in evidence for all purposes [illegible] all possible objections to said documents or the contents [illegible] waived. -- Metzner, J.
[illegible]6-75	Filed JUDGMENT and order that the defendants Claude S. Brinegar, Sec. of the [illegible] of Transportation, Admiral Chester R. Bender, Commandant of the US Coast [illegible] and Robert E. Hampton, Jayne Spain and L.J. Andolsek, constituting the [illegible] of the U.S. Civil Service Commission, have judgment against all plaint[illegible] Ronald H. Whelan, et.al., dismissing the complaint. - CLERK.
[illegible]75	Filed plaintiff's notice of appeal to the USCA for the 2nd Circuit from Judge Metzner's decision and judgment based on same and entered on 11-3-[illegible] 11-6-75 respectively. -- copy mailed to US Attorney.
[illegible]-75	Filed pltf's notice of appeal to the USCA for the 2nd Circuit from final judgment entered on 11-3-75 - copy mailed to US Attorney.
[illegible]-75	Filed pltfs amended notice of appeal to the USCA for the 2nd Circuit from final judgment entered in this action on 11-3-75. - copy to US Attorney.

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- X

RONALD H. WHELAN, JOHN J. BRODERICK, EDWARD J. BURNS, EDWARD J. GASPARTICH, WILLIAM F. LYNCH, ANTHONY J. ROSS, HENRY O. HANRAHAN, RICHARD LIETO, FRANCIS B. McCOMB, FRANK B. JONES, BENEDETTO RUNCO, GEORGE S. BRITO, JOHN E. CONDON, JOHN E. HARKINS, JOHN B. JONES, WILLIAM F. KEHOE, RICHARD D. LANG, TIMOTEO MONGE, WALTER R. PRICE, ALFRED J. SEEVERS, GUNNAR O. STRAND, JOHN A. MUELLER, MARC LANG, BENEDETTO LEO, HARATIO N. AGGARD, JOHN S. FORTE, ERICH GEHM, JOSEPH G. GLENNON, CONSTANTINO L. LEONE, SABATO A. MESSINA, FRANK J. MONDELLO, HENRY G. NIELSEN, HAROLD M. OLIVER, SIMON R. ROSENTHAL, JOSEPH J. SCHULTZ, JOHN R. SHARPE, THOMAS SOLOMETO, JR., ANTONIO SPINELLI, MARIO RUNCO, FREDERICK H. MALLETT, ROBERT M. DeGARLAND, HENRY BUTLER, HERMAN SEIBEL and JAMES MULVANEY,

Plaintiffs,

-against-

COMPLAINT

PAUL BRINNGARD, Secretary of THE DEPARTMENT OF TRANSPORTATION, ADMIRAL CHESTER R. BENDER, Commandant of THE UNITED STATES COAST GUARD and ROBERT E. HAMPTON, JAYNE SPAIN and L. J. ANDOLSEK, constituting the members of THE UNITED STATES CIVIL SERVICE COMMISSION,

Defendants.
- X

The plaintiffs, by their attorney, HARRY GROSSMAN, complaining of the defendants herein respectfully allege:

FIRST: That the jurisdiction of this Court is based upon the fact that the plaintiffs herein are officers or members of

crews of vessels employed by an agency of the United States of America, and the action involves questions of pay and salaries of the plaintiffs as officers or members of the crews of such vessels, as well as a workable pay adjustment policy for plaintiffs as Federal civilian personnel, as governed by Title 5, U.S. Code, Sec. 5342 and also as reviewed under Executive Order 11639 of 11 January 1972.

SECOND: That the plaintiffs are all employees in varying capacities of the Governors Island ferry operation which carries passengers and vehicles from and to the Governors Island facility in the Harbor of New York City to and from Manhattan, a Borough of the City of New York. Said Governors Island facility was originally operated by the Department of the Army and subsequently transferred to the United States Coast Guard, which originally came under the jurisdiction of the Treasury Department and then was transferred into the new Department of Transportation.

THIRD: That the plaintiffs, RONALD H. WHELAN, JOHN J. BRODERICK, EDWARD J. BURNS, EDWARD J. GASPARTICH, WILLIAM F. LYNCH and ANTHONY J. ROSS were and still are employed by the defendant, ADMIRAL CHESTER R. BENDER, Commandant of the United States Coast Guard as Masters on the various Governors Island Ferry Crews operating between

the Borough of Manhattan, City, State and Southern District of New York and Governors Island, located in the Harbor of New York City, in waters which are in the Southern District of New York.

FOURTH: That the plaintiffs, HENRY O. HANRAHAN, RICHARD LIETO, FRANCIS B. McCOMB and FRANK B. JONES were and still are employed by the defendant, ADMIRAL CHESTER R. BENDER, Commandant of the United States Coast Guard as Engineers on the various Governors Island Ferry Crews operating between the Borough of Manhattan, City, State and Southern District of New York and Governors Island, in the Harbor of New York City, in waters which are in the Southern District of New York.

FIFTH: That the plaintiffs, BENEDETTO RUNCO, GEORGE S. BRITO, JOHN E. CONDON, JOHN E. HARKINS, JOHN B. JONES, WILLIAM F. KEHOE, RICHARD D. LANG, TIMOTEO MONGE, WALTER RO PRICE, ALFRED J. SEEVERS, GUNNAR O. STRAND, JOHN A. MUELLER, MARC LANG and BENEDETTO LEO were and still are employed by the defendant, ADMIRAL CHESTER R. BENDER, Commandant of the United States Coast Guard as Oiler Firemen on the various Governors Island Ferry Crews operating between the Borough of Manhattan, City, State and Southern District of New York and Governors Island, located in the Harbor of New York City in waters which are in the Southern District of New York.

SIXTH: That the plaintiffs, HARATIO N. AGGARD, JOHN S. FORTE, ERICH GEHN, JOSEPH G. GLENNON, CONSTANTINO L. LEONE, SABATO A. MESSINA, FRANK J. MONDELLO, HENRY G. NIELSEN, HAROLD M. OLIVER,, SIMON R. ROSENTHAL, JOSEPH J. SCHULTZ, JOHN R. SHARPE, THOMAS SOLOMETO, JR., ANTONIO SPINELLI, MARIO RUNCO, FREDERICK H. MALLETT, ROBERT M. DeGARLAND, HENRY BUTLER, HERMAN SEIBEL and JAMES MULVANEY were and still are employed by the defendant, ADMIRAL CHESTER R. BENDER, Commandant of the United States Coast Guard as Deckhands on the various Governors Island Ferry Crews operating between the Borough of Manhattan, City, State and Southern District of New York and Governors Island, located in the Harbor of New York City, in waters which are in the Southern District of New York.

SEVENTH: That the defendant, PAUL BRINNGARD, is the Secretary of the Department of Transportation, which is the Federal Department which presently oversees and has charge of the United States Coast Guard, by whom all the plaintiffs herein are employed.

EIGHTH: That the defendant, ADMIRAL CHESTER R. BENDER, is the Commandant of the United States Coast Guard by whom all the plaintiffs herein are employed.

NINTH: That the defendants, ROBERT E. HAMPTON, JAYNE SPAIN and L. J. ANDOLSEK, are the members constituting the United States Civil Service Commission, which body is charged with approving and adjusting the wages and salaries from time to time of the plaintiffs herein, in accordance with established laws, policies and practices.

TENTH: That the aforesaid Title 5, U. S. Code, Sec. 5342 provides and mandates that the pay and salaries of officers and members of crews of vessels, as are the plaintiffs herein, shall be fixed and adjusted from time to time as nearly as is consistent with public interest in accordance with the prevailing rates and practices in the maritime industry.

ELEVENTH: That effective 3 July 1966 and again on 28 August 1968, the United States Coast Guard adopted a policy to adjust the rates of pay of the plaintiffs herein by the same cents per hour increases in basic rates for comparable officer and crew classifications in the City of New York Staten Island Ferry schedule.

TWELFTH: That the United States Coast Guard has continuously and deliberately failed to pay the plaintiffs herein the prevailing wage which non-federal officers and crews in the New York area are receiving, and has attempted to freeze the wage scales of the plaintiffs herein at levels far below comparable rates in New York City for similar employment.

THIRTEENTH: That, for example, a Master working on the New York City Ferry receives $10.24 per hour, while a Master employed by the United States Coast Guard is at the same time receiving only $6.71 per hour.

FOURTEENTH: That, for example, an Engineer working on the New York City ferry receives $9.91 per hour, while an Engineer employed by the United States Coast Guard is at the same time receiving only $6.47 per hour.

FIFTEENTH: That, for example, an Oiler Fireman working on the New York City ferry receives $7.38 per hour, while an Oiler Fireman employed by the United States Coast Guard is at the same time receiving only $4.94 per hour.

SIXTEENTH: That, for example, a Deckhand working on the New York City ferry receives $7.09 per hour, while a Deckhand employed by the United States Coast Guard is at the same time receiving only $4.81 per hour.

SEVENTEENTH: That in addition, the United States Coast Guard has refused to bargain in good faith, has delayed adjustments to income dictated by the prevailing wages and inflation, and has refused to negotiate on wages with the union representing many of the plaintiffs herein and has stalled and delayed any actual increases in wages.

EIGHTEENTH: That 5.5% increase was offered to the plaintiffs herein on 5 March 1972, and a study was immediately undertaken to determine if there was a need to adjust wages above that increase, which action had to be referred to the United States Civil Service Commission for review and approval.

NINETEENTH: That more than one (1) year has elapsed, and no result has been forthcoming as to the result of said study and investigation and no definitive determination has been forthcoming from the United States Civil Service Commission.

TWENTIETH: That for a long period of time, the plaintiffs herein have suffered wage deficiencies in their wage schedule compared to ferry operations in New York City Staten Island Ferry which are most nearly comparable in type of work performed by each of the plaintiffs herein.

TWENTY-FIRST: That the plaintiffs herein contend that they are entitled to receive the prevailing and going rate of wages for their comparable jobs on the New York City Staten Island Ferry retroactive to July 1, 1967, and that a pay adjustment is due them for the future.

TWENTY-SECOND: That from all of the above, it clearly appears that the defendants herein have violated their duty

and obligation to each of the plaintiffs herein in failing to have a proper pay schedule determined for the officers and crew members of the various Governors Island ferries.

TWENTY-THIRD: That due demand for the relief requested herein has been made on behalf of the plaintiffs and refused.

WHEREFORE, the plaintiffs pray that this Court grant judgment to each of them for the prevailing and going rate of wages for the comparable jobs in the New York City Staten Island Ferry retroactive to July 1, 1967 and for a pay adjustment for the future together with appropriate interest, costs and disbursements as well as a reasonable attorney's fee.

HARRY GROSSMAN
Attorney for Plaintiffs
Office & P. O. Address
515 Madison Avenue
New York, N. Y. 10022
Tel: (212) 752-4220

SUMMONS

UNITED STATES DISTRICT COURT
for the
Southern District

RONALD H. WHELAN, ET AL

(See Attached Caption)

Plaintiffs

SUMMONS

v.

PAUL BRINNGARD, et al

Defendants

To the above named Defendant:

You are hereby summoned and required to serve upon

HARRY GROSSMAN

plaintiff's attorney, whose address is 515 Madison Avenue, New York, N.Y. 10022 an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT

Clerk of the Court

E.A. Beckman,
Deputy Clerk

[Seal of Court]

Dated: New York, N.Y.
Jun 26, 1973

(Note: This summons is issued pursuant to Rule 4 FRCP)

[CAPTION REFERRED TO IN SUMMONS-Page 12a]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

RONALD H. WHELAN, JOHN J. BRODERICK, EDWARD J. BURNS, EDWARD J. GASPARTICH, WILLIAM F. LYNCH, ANTHONY J. ROSS, HENRY O. HANRAHAN, RICHARD LIETO, FRANCIS B. McCOMB, FRANK B. JONES, BENEDETTO RUNCO, GEORGE S. BRITO, JOHN E. CONDON, JOHN E. HARKINS, JOHN B. JONES, WILLIAM F. KEHOE, RICHARD D. LANG, TIMOTEO MONGE, WALTER R. PRICE, ALFRED J. SEEVERS, GUNNAR O. STRAND, JOHN A. MUELLER, MARC LANG, BENEDETTO LEO, HARATIO N. AGGARD, JOHN S. FORTE, ERICH GEHM, JOSEPH G. GLENNON, CONSTANTINO L. LEONE, SABATO A. MESSINA, FRANK J. MONDELLO, HENRY G. NIELSEN, HAROLD M. OLIVER, SIMON R. ROSENTHAL, JOSEPH J. SCHULTZ, JOHN R. SHARPE, THOMAS SOLOMETO, JR., ANTONIO SPINELLI, MARIO RUNCO, FREDERICK H. MALLETT, ROBERT M. DeGARLAND, HENRY BUTLER, HERMAN SEIBEL and JAMES MULVANEY,

SUMMONS

Plaintiffs,

v.

PAUL BRINNGARD, Secretary of THE DEPARTMENT OF TRANSPORTATION, ADMIRAL CHESTER R. BENDER, Commandant of THE UNITED STATES COAST GUARD and ROBERT E. HAMPTON, JAYNE SPAIN and L. J. ANDOLSEK, constituting the members of THE UNITED STATES CIVIL SERVICE COMMISSION,

Defendants.

----------x

ANSWER

JEH:wp
73-2255

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

RONALD H. WHELAN, et al.,

Plaintiffs,

- v -

PAUL BRINNIGARD, Secretary of the Department of Transportation, et al.,

Defendants.

- -x

ANSWER

73 Civ. 2819 (CMM)

Defendants, by their attorney, Paul J. Curran, United States Attorney for the Southern District of New York, for their answer to the complaint herein, allege:

1. Deny each and every allegation contained in paragraphs "FIRST", "TWELFTH", "SEVENTEENTH", "NINETEENTH", "TWENTIETH", "TWENTY-FIRST", "TWENTY-SECOND" and "TWENTY-THIRD" of the complaint herein.

2. Admit the allegations contained in paragraphs "SECOND", "THIRD", "FOURTH", "FIFTH", "SIXTH", "SEVENTH" and "EIGHTH" of the complaint herein, except allege that

the Secretary of Transportation is Claude S. Brinegar.

3. Deny each and every allegation contained in paragraph "NINTH" of the complaint herein, except admit that defendants Robert E. Hampton, Jayne Spain and E. J. Andolsek are members of the United States Civil Service Commission.

4. With respect to the allegations contained in paragraph "TENTH" of the complaint herein, respectfully refer to 5 U.S.C. § 5342 for the true and correct terms and provisions thereof.

5. Deny each and every allegation set forth in paragraph "ELEVENTH" of the complaint herein, except allege that on July 3, 1966, a Treasury Department Wage Board granted a wage increase to the Governor's Island ferryboat employees, and stated that in the future wage rates of such employees would be adjusted by the same cents per hour increases in basic rates for comparable offices and crewmen classifications in the City of New York Staten Island Ferry schedule.

6. Admit each and every allegation contained in paragraphs "THIRTEENTH", "FOURTEENTH", "FIFTEENTH" and "SIXTEENTH" of the complaint herein, except allege that

at the present time, a master, employed by the United States Coast Guard, receives $7.08 per hour, an engineer employed by the United States Coast Guard receives $6.82 per hour, an oiler fireman employed by the United States Coast Guard receives $5.21 per hour, and a deckhand employed by the United States Coast Guard receives $5.07 per hour.

7. Deny each and every allegation contained in paragraph "EIGHTEENTH" of the complaint herein, except allege that a wage schedule was fixed by the United States Coast Guard, to be effective on March 5, 1972, which reflected a 5.5% increase in wages, and further allege that the Department of Transportation requested the Civil Service Commission to approve a higher wage increase, which request was denied on August 28, 1972.

FIRST AFFIRMATIVE DEFENSE

8. This Court lacks subject matter jurisdiction.

SECOND AFFIRMATIVE DEFENSE

9. The complaint fails to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

10. Plaintiffs have not exhausted their administrative remedies.

WHEREFORE, defendants demand that judgment be entered dismissing the complaint herein, together with the costs and disbursements of this action.

Dated: New York, New York
October 19, 1973

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for Defendants

By: _____
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Assistant United States Attorney
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Telephone: 212-264-6322

Hk Lawler
73-2255.

ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND STRIKING AFFIRMATIVE DEFENSES OF DEFENDANT

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CLERK
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RONALD H. WHELAN, et al.,

Plaintiffs,

-against-

CLAUDE S. BRINEGAR, Secretary of the Department of Transportation, et al.,

Defendants.

73 Civ. 2819

#40644

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METZNER, D. J.:

MICROFILM
APR 29 1974

Plaintiffs have moved to strike defendants' affirmative defenses pursuant to Rule 12(f), Fed. R. Civ. P. Defendants have cross moved for summary judgment pursuant to Rule 56, Fed. R. Civ. P.

This is an action by officers and crewmen of the Governors Island Ferry, federal employees, for wages which they claim have been improperly denied to them. The nub of the complaint is that plaintiffs are entitled to a wage scale comparable to that paid by the City of New York to employees on the Staten Island Ferry. Defendants are the Secretary of Transportation, the Commandant of the Coast Guard, and various members of the United States

Civil Service Commission (Civil Service Commission).

The following undisputed facts emerge from the Rule 9(g) statements filed on these motions. Until 1966, parity in payment to the plaintiffs was maintained with the crews of the 69th Street Brooklyn Ferry system operated by the City. Sometime prior to June 1966, the 69th Street Brooklyn Ferry ceased operations and thus the reference point for determining parity was eliminated.

On June 1, 1966, the Coast Guard assumed control over Governors Island, including the operation of the ferry. Shortly thereafter on July 3, 1966, the Treasury Department Wage Board authorized an increase in the base pay rates of the Governors Island Ferry employees equal to the increase that had been given to comparable officers and crewmen on the Staten Island Ferry. At that time, the Wage Board also stated that in the future, this parity would be maintained.

On October 15, 1966, jurisdiction over the Coast Guard was transferred from the Department of the Treasury to the newly-created Department of Transportation (DOT).

In 1968 Governors Island Ferry employees sought an increase in their wages based upon an increase which had been granted by the City of New York to Staten Island Ferry employees. In response to this demand, the Coast Guard approved an interim wage increase of 8.5 per cent retroactive to August 25, 1968. A final wage settlement was achieved on December 1, 1969, when the Coast Guard issued a new wage schedule which amounted to a 25 per cent increase over pre-1968 wages. Thus, parity was again achieved.

The next round of wage discussions commenced on March 8, 1971 with a letter from the National Maritime Union (NMU) to the Coast Guard seeking a 53 per cent increase in wages over a three-year period. The NMU's request was based on a wage pact which had been achieved by other maritime workers in the Port of New York. No agreement was reached on this demand because, on August 15, 1971, Executive Order 11615 was issued pursuant to the Economic Stabilization Act of 1970 (Pub. L. 91-379) which established a temporary freeze on all wage increases in the United States (36 F.R. 15727). This was followed on January 11, 1972 by Executive Order 11639 which granted

authority to the Civil Service Commission to set maximum pay increase ceilings for federal employees. The maximum pay increase under this Order was then placed at 5.5 per cent. Section 2(b) of this latter Order also permitted exemptions from the wage ceiling to be granted where:

> "(i) a tandem relationship exists between a Federal pay schedule for a specialized employee unit and pay increases granted in a specialized activity in the private sector, (ii) the Pay Board has permitted a pay increase for the specialized activity in the private sector which is in excess of the guidelines, and (iii) it is determined that a comparable increase is essential to the continued operation of the Government service concerned." (37 F.R. 521).

Pursuant to Order 11639, DOT issued an interim wage schedule on March 5, 1972 granting a 5.5 per cent increase in the wages of plaintiffs. After conducting a further survey which showed that the prevailing wage increases for maritime employees in the Port of New York averaged 8.5 per cent, DOT requested the Civil Service Commission to exempt employees of Governors Island Ferry so as to award the 8.5 per cent increase on top of the 5.5 per cent. This request was denied on the ground that the three conditions specified in Order 11639 were not met.

In May 1973, DOT conducted another wage survey of maritime workers in the New York Port which reflected an additional 10.13 per cent increase in wages over the 1972 rates. As a consequence, another 5.5 per cent increase was granted to the Governors Island Ferry employees effective July 8, 1973. A second request was made to the Civil Service Commission for an exemption from the wage ceiling in order to grant an increase to 10.13 per cent. Before a ruling was received from the Commission, however, the instant suit was commenced. Thereafter, on October 24, 1973, DOT's second request was denied on the ground that neither the first nor third conditions of Executive Order 11639 had been satisfied.

In the instant suit, plaintiffs are asserting essentially two different causes of action. The first charges that the defendants have abused their discretion in failing to follow the provisions of 5 U.S.C. § 5348(a). The pertinent portions of that section provide:

> "(a) . . . the pay of officers and members of crews of vessels . . . shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry."

Secondly, it is alleged that the Civil Service Commission abused its discretion and acted arbitrarily and capriciously by refusing to grant DOT an exemption from the 5.5 per cent wage increase ceiling.

Plaintiffs seek a judgment granting them "the prevailing and going rate of wages for the comparable jobs in the New York City Staten Island Ferry retroactive to July 1, 1967 and for a pay adjustment for the future . . . ."

We turn first to plaintiffs' motion to strike the three affirmative defenses. These defenses are: (1) lack of subject matter jurisdiction, (2) failure to state a claim upon which relief may be granted, and (3) failure to exhaust administrative remedies. In the course of these proceedings, defendants have abandoned the third affirmative defense, thereby conceding that plaintiffs have exhausted all available administrative remedies.

Plaintiffs claim that the first defense is insufficient because the court does in fact have subject matter jurisdiction. On the basis of the record to date, this issue is not readily free from doubt. First, both of the parties have erroneously assumed that Section 10 of the Administrative Procedure Act (5 U.S.C. § 702)

confers an independent grant of jurisdiction on the district courts. This view, however, is directly contrary to the most recent decisional law on this Circuit. See, e.g., Aquayo v. Richardson, 473 F.2d 1090, 1101-02 (2d Cir. 1973), cert. denied sub nom. Aquayo v. Weinberger, 42 U.S. L.W. 3406 (Jan. 14, 1974); Mills v. Richardson, 464 F.2d 995, 1001, n. 9 (2d Cir. 1972); Wolff v. Selective Service Board, 372 F.2d 817, 826 (2d Cir. 1967); but see, Cappadora v. Celebrezze, 356 F.2d 1, 5-6 (2d Cir. 1966).

Because plaintiffs' claim arises under an Act of Congress (i.e., 5 U.S.C. § 5348(a)), jurisdiction could exist under 28 U.S.C. § 1331 if each of the plaintiffs meets the amount in controversy requirement. Cf., Zahn v. International Paper Co., 42 U.S.L.W. 4087, 4091, n.11 (Dec. 17, 1973). However, the complaint is devoid of any reference to an amount in controversy. Normally this would preclude the invocation of jurisdiction predicated on Section 1331 since we would be unable to determine if each plaintiff's claim exceeds $10,000. However, another jurisdictional statute is implicated in this case which, when read together with Section 1331,

permits us to presume that jurisdiction exists.

Section 1346(a)(2) of Title 28 grants the district court concurrent jurisdiction with the Court of Claims over suits against the United States by federal officers and employees seeking the recovery of salaries provided the claim is less than $10,000. See, 7B Moore, Federal Practice § 1346 at 30-527 (2d ed. 1973). Since each plaintiff's claim here is either greater than, or less than, $10,000, jurisdiction can properly be assumed despite the absence of any monetary amount in the complaint.

We also note that jurisdiction might exist under Section 211 of the Economic Stabilization Act of 1970, as amended (Pub. L. No. 92-210) (12 U.S.C. § 1904), which grants exclusive jurisdiction to the district court over cases and controversies arising under the Act or under regulations or orders issued under the Act. Strangely, neither side has considered the relevance of this legislation on either the jurisdictional or substantive issues presented by this complaint. Certainly, such consideration should be undertaken in the course of future proceedings. The motion to strike the first affirmative defense is granted.

Order Denying Defendants' Motion

The second affirmative defense which plaintiffs seek to strike is the alleged failure to state a claim upon which relief may be granted. A motion under Rule 12(f) to strike out such a defense entails a consideration of the sufficiency of the complaint. Lehmann Trading Corp. v. J & H Stolow, Inc., 184 F. Supp. 21, 22 (S.D.N.Y. 1960). It is clear that, taking the well-pleaded allegations in the complaint as true, it does not appear to a certainty that plaintiffs are not entitled to relief under any state of facts which could be adduced in support of their claims. 2A Moore, supra, ¶ 12.08 at 2274 (2d ed. 1968). The motion to strike the second affirmative defense is therefore granted.

As far as defendants' motion for summary judgment is concerned, it must be denied. The primary issue to be resolved is whether the Civil Service Commission abused its discretion in passing upon DOT's request for an exemption from the wage ceiling for these federal employees. This in turn raises several important factual issues which are in genuine dispute. They include, inter alia: (1) whether there was in fact a tandem relationship between the Governors Island Ferry and the Staten Island

Ferry, (2) whether the wage increases sought by DOT in 1972 and 1973 were essential to the continuation of the Governors Island Ferry operation, (3) whether the tandem relationship was violated.

The secondary issue presented is whether the defendants acted arbitrarily under Section 5348 of Title 5 by not paying plaintiffs on a parity with the Staten Island Ferry employees and what effect the Economic Stabilization Act of 1970, supra, and the Executive Orders issued pursuant thereto, had on DOT's authority under Section 5348 to set the pay rates of these plaintiffs.

Defendants' motion for summary judgment is denied.

So ordered.

Dated: New York, N. Y.
April 25, 1974

U. S. D. J.

TRANSCRIPT OF PROCEEDINGS

CLERK'S COPY
RETURN TO COURT REPORTERS ROOM 803 FOR FILING

Q:mg

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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RONALD H. WHELAN, JOHN J. BRODERICK, EDWARD J. BURNS, EDWARD J. GASPARTICH, WILLIAM F. LYNCH, ANTHONY J. ROSS, HENRY O. HANRAHAN, RICHARD LIETO, FRANCIS B. McCOMB, FRANK B. JONES, BENEDETTO RUNCO, GEORGE S. BRITO, JOHN E. CONDON, JOHN E. HARKINS, JOHN B. JONES, WILLIAM F. KEHOE, RICHARD D. LANG, TIMOTEO MONGE, WALTER R. PRICE, ALFRED J. SEEVERS, GUNNAR O. STRAND, JOHN A. MUELLER, MARC LANG, BENEDETTO LEO, HARATIO N. AGGARD, JOHN S. FORTE, ERICH GEHM, JOSEPH G. GLENNON, CONSTANTINO L. LEONE, SABATO A. MESSINA, FRANK J. MONDELLO, HENRY G. NIELSEN, HAROLD M. OLIVER, SIMON R. ROSENTHAL, JOSEPH J. SCHULTZ, JOHN R. SHARPE, THOMAS SOLOMETO, JR., ANTONIO SPINELLI, MARIO RUNCO, FREDERICK H. MALLETT, ROBERT M. DeGARLAND, HENRY BUTLER, HERMAN SEIBEL, JAMES MULVANEY and RICHARD DARE,

Plaintiffs,

v.

CLAUDE S. BRINEGAR, Secretary of THE DEPARTMENT OF TRANSPORTATION, ADMIRAL CHESTER R. BENDER, Commandant of THE UNITED STATES COAST GUARD and ROBERT E.HAMPTON, JAYNE SPAIN and L. J. ANDOLSEK, constituting the members of THE UNITED STATES CIVIL SERVICE COMMISSION,

Defendants.

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73 Civ. 2819

U.S. DISTRICT COURT FILED MAY 2 - 1975 S. D. OF N. Y.

RECEIVED DEC 15 1975 MARKOWITZ & GLANSTEIN

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B E F O R E:

HON. CHARLES M. METZNER,
District Judge

New York, New York
February 20, 1975
10:30 a.m.

APPEARANCES:

HARRY GROSSMAN, Esq.,
Attorney for Plaintiffs

BOBBY LAWYER, Esq.,
PATRICK H. BARTH, Esq.,
Attorney for Defendants

...

(Case called)

MR. GROSSMAN: Plaintiffs are ready.

MR. LAWYER: Defendants ready.

THE COURT: You may proceed, Mr. Grossman.

MR. GROSSMAN: Your Honor, do you want an opening statement?

THE COURT: If you wish to give me one. If not, I will take the opening witness.

MR. GROSSMAN: I will be very glad to outline

this, if I may.

THE COURT: All right.

MR. GROSSMAN: Your Honor, the plaintiffs in this case seek basically three things. They seek what they contend are justifiable increases which have passed them by for various reasons, and one of the outstanding reasons that has hit me, your Honor, in preparing this case in the last week, is the fact that bureaucracy at its worst will be demonstrated here during the course of this trial.

THE COURT: Wait. There is no jury here. I don't need any dramatic statements.

Just give me simple statements of fact so you lead me into what you are going to prove.

We will have no opening statements to a jury. We will have no closing statements to a jury.

MR. GROSSMAN: Right, your Honor.

The second thing we seek is that the exemption which was denied by the Civil Service be overturned by your Honor and, third, we seek a direction for the future against the Departments involved so far as the wage scales of these plaintiffs are concerned.

The Governors Island Ferry, as your Honor knows, was originally under the jurisdiction of the Army when the Army supervised Governors Island. And for many years

the Army was content to give the same wages, parity, and the same increases to these four categories of men: Masters, engineers, oilers and deckhands; as were received by the 69th Street Ferry.

The 69th Street Ferry had one terminus in Brooklyn and the other in Staten Island and for many years it was operated by private owners and the Army was content to give the same wages and the same increases to them.

When the Verrazano Bridge came up, your Honor, the 69th Street Ferry went out of business.

Thereafter the contract which the Army had signed had some time to go, and it was continued by the Coast Guard.

Then came the point where the Coast Guard took over administration of Governors Island and the supervision of the ferry so that these men, the plaintiffs, became employees of the Coast Guard.

In 1966 the Coast Guard then being under the Treasury Department, a Treasury Department Wage Board issued a document which said that, No. 1, we will give these men the same increases that the Staten Island Ferry operated by the City of New York, having one terminus in Manhattan and the other in Staten Island. We will give them the increase that they got in 1965 and we agree as a matter of policy

that hereafter all increases received by the Staten Island Ferry employees will be received by the Coast Guard.

Your Honor, I will show by documentary proof that not only did the Coast Guard in 1969 say that was our policy in 1966, and we adopted it again in August of 1968 -- and I will show your Honor that in a deposition taken of one of the chief personnel men in the Department of Transportation he expressed surprise.

He had never heard of this Treasury Department memo. He had never heard of the letters addressed to Congressmen by the Coast Guard, one signed by the Commandant and one signed by the Acting Commandant and one signed by a captain of the Coast Guard.

This, despite the fact that I now learn and will bring out during the course of this trial that there are symbols on those three letters to these three Congressmen which indicate that these letters came from this gentleman's office whose deposition I took.

No. 1, he said he had never heard of the policy. He had never heard of the Treasury memorandum or wage order.

No. 2, he says "We never followed it. We never followed it because the Transportation Department, which then came into being and took the Coast Guard as part of it

from the Treasury Department" - - his logic was the Transportation Department was a new department of the Government, "we weren't bound by anything that any other department had said. We were starting fresh. We were going to develop our own rules and regulations. Nevertheless never had there been any pronouncement by the Coast Guard or by the Department of Transportation to the effect that the wage direction of the Treasury Department dated July 3, 1966, would be abrogated or would not be followed." These men never were told a thing.

We next come to a letter which will be presented--

THE COURT: You are giving me too much detail for an opening. I would rather you put the witnesses on the stand and let me hear them under oath, tell me what you are telling me now.

You must realize realize that I have a little background knowledge of this, having written on it in detail.

MR. GROSSMAN: I desire to point out that there are a lot of new things that have been discovered.

THE COURT: Let the witnesses tell it from the stand under oath.

MR. GROSSMAN: All right, sir.

Mr. Whelan.

RONALD HOWARD WHELAN, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

THE COURT: You may proceed.

MR. GROSSMAN: May we first put into evidence the records of the Civil Service Commission which under your Honor's decision and the Government's agreement will constitute the entire record of the Civil Service Commission.

MR. LAWYER: No objection, your Honor.

THE COURT: Where is it?

MR. GROSSMAN: I have copies right here.

xx (Plaintiffs' Exhibit 1 received in evidence)

DIRECT EXAMINATION

BY MR. GROSSMAN:

Q Mr. Whelan, are you employed on the Governors Island Ferry?

A Yes, sir.

Q How long have you been so employed?

A I have been on the Governors Island Ferry since March 19, 1957.

Q And in what capacity?

A As a master captain.

Q And have you always served in that capacity?

A Yes, sir.

Q And are you licensed in order to serve in that capacity?

A Yes, sir.

Q Will you tell us something bout the requirements for obtaining a license and how you obtained it?

THE COURT: I really don't think that is necessary. I assume he has qualified under whatever regulations are necessary.

Q Under the license that you have, sir, are you qualified to run the Governors Island Ferry, and what else? How far does it extend?

A My license covers me to no restriction of any vessel or any ferry or any operation in the Port of New York. I have an unlimited tonnage license.

THE COURT: From the Port of New York?

THE WITNESS: From the Narrows to Yonkers, East River to Stepping Stone, Staten Island Sound to South Amboy.

I have an unlimited pilotage and unlimited master of ferry license.

Q And your skills under your license, would they permit you to operate and do the same thing that you are doing with respect to the Governors Island Ferry on one of the ferries operated on the Staten Island Ferry or the

Hart's Island Ferry?

A Yes, sir.

Q And the same would have happened in the 69th Street Ferry?

A Yes, sir.

Q Is that correct?

A Correct, sir.

Q Will you please describe for his Honor your duties as a master on the Governors Island Ferry?

A Well, I normally come aboard at 7:30 in the morning, make routine spot inspections, check out the log for previous orders given down from the Transportation Officer, read the previous skipper's report as to any deficiencies and when the SP blows the whistle, we get under way.

We make approximately 32 crossings in eight hours on this particular half-mile run.

We hold periodic fire and boat drills. We make spot inspections for the compliance of the safety as far as smoking regulations aboard the boat.

Q Have you any knowledge of what a master on the Staten Island Ferry does and,if so, how do you have that knowledge?

A The master on the Staten Island Ferry does the

same identical duties I do.

Q Have you ever had occasion to ride the Staten Island Ferry?

A Yes, sir.

Q Have you ever had occasion to operate it?

A I took a performance test in 1948 on the Merry Murray. I took the vessel - - I took a departure from the Whitehall Street Depot to St. George, and on the return trip -- I was seeking employment on the Staten Island Ferry at the time,being that the Airline Ferry was going out of operation in November 1954.

Q In terms of function and responsibility, sir, would you say or are you prepared to say that your duties are identical with that of the Staten Island Ferry master and the Hart's Island Ferry master?

A My duties are identical. There is no other exempt ferry in the Port that is doing the same particular type function that we are;making head-on landings,picking up vehicles,picking up passengers on the mainland, transporting them to Governors Island and returning the passengers and cars from Governors Island back to the mainland.

Q As master, are you in charge of the ferry that you are on on that particular day?

A I am in full responsibility when that vessel is

under way.

Q What are the other categories of employees on your ferry andare they responsible to you?

A I have in the wheelhouse one wheelsman. I have on deck two deckhands. Below deck in the eingine room I have a chief engineer and one marine man.

Q Have you any knowledge of the complement on the Staten Island Ferry?

A The Staten Island Ferry has approximately 14 crew members, two licensed personnel in the wheelhouse, one licensed deck mate on deck, a complement of approximately six deckhands. Below deck they have a chief engineer, they have a marine engineer and various other titles such as ward attendant, oiler and stoker, fireman, whatever the other title is.

Q Besides your category as master are there any other employees on the Governors Island Ferry who are required to be licensed?

A All the masters are required licensed. All the chief engineers are required licensed.

Q So the masters and engineers are licensed?

A Yes, sir.

Q How about the oilers and deckhands?

A We have substitutes. They have extra licensed

personnel with their ticket. They are paid deckhands. But when they fill in for master they get captain's pay, and when the oiler, with a commensurate license to cover the engineer's job, he fills in and gets the engineer's pay for that day.

Q Will you turn to the size, character, construction and description of your ferry, the Staten Island Ferry, the 69th Street Ferry, and the Hart's Island Ferry.

Before you do that will you just answer this question:

The 69th Street Ferry is out of business, is that correct?

A We had one of their ferries in operation at Governors Island called the Tides.

Q One of the ferries formerly on the 69th Street run is now used by the Coast Guard?

A Yes, sir.

Q When you get to that, will you describe how it compares with the other two ferries that Governors Island operates now?

But will you also tell his Honor what other ferry service is there in the New York Harbor today besides the Governors Island Ferry?

A There is a ferry operating out of Hart's Island

to City Island and City Island back to Hart's Island.

Q Who operates that?

A New York City, I believe, sir.

Q Who operates the Staten Island Ferry?

A New York City, sir.

Q Is there any difference in the pay rates of the crews of the Staten Island Ferry and the Hart's Island Ferry?

A They are identical.

Q And will you tell his Honor now, compare the various structures, sizes, description of the ferries of the four groups, including the 69th Street Ferry.

A The 69th Street Ferry, we have the Tides which is approximately 176 feet long. She has a breadth of about 43 feet, a depth of 13-1/2 feet. She carries about 150 passengers, has a horsepower of 16 hundred something.

The Corson and Minue are identical sister ships.

Q That is the other two operated by Governors Island?

A They were formerly controlled by the Army, the Corson and the Minue. They are approxiamtely 169-172 feet long. Theyhave a breadth of 48 feet. They have a depth of 14 feet and the horsepower is 1100 or about 1000. The gross tonnage is 869 and the Hart's Island Ferry,I have seen it pass once. He came into the slip next to me, slip 6.

THE COURT: It really doesn't make any difference. Just describe it.

THE WITNESS: The little ferry up at Hart's Island looked like a little toy and I got a good laugh at him when he pulled into the slip next to me. He was so small I thought I could reach out and pick it up.

That man is getting the same commensurate pay as the --

THE COURT: That is the City's problem. I am not worried about that.

Give me the comparison of the Staten Island Ferry.

THE WITNESS: The Staten Island Ferry I am not too familiar with as far as their overall length, breadth, depth. They are longer than us. Their breadth is a little wider. Their depth is a little deeper. Their tonnage is heavier, their horsepower is heavier. Their passenger-carrying capacity is greater.

I have from the American Bureau of Shipping that I just checked into a few weeks ago as to the dimensions. Offhand I am not familiar with them. I don't operate their boats but I have a paper here with their dimensions if you want that.

Q May I see that?

THE COURT: You can read from that if you wish.

THE WITNESS: Thank you very much,your Honor.

THE COURT: You only have to read as to one of the boats.

THE WITNESS: We have the ferry Verazzano. The length is 56 feet, the breadth is 69 feet, the depth is 20 feet, the gross tonnage is 2285 and the horsepower is 4000.

That was issued to me by the American Bureau of Shipping. They didn't even date it. It was last week.

MR. GROSSMAN: I offer the document.

THE COURT: He has already read it in.

Q Will you tell us what the various ferries do and what do they carry, how many trips do they make; compare it with the Governors Island ferry.

A The Governors Island ferry, she has 16 round trips in eight hours, making 32 crossings in an eight-hour period of work.

The Staten Island ferry I believe is making approximately seven round trips which is 14 landings in their eight-hour period.

The Hart's Island ferry I have no idea of the amount of trips they make.

Q Will you describe --

A We pick up cars in New York City. We carry approximately 32 vehicles on the Corson and the Minue. We carry 45 vehicles on the Tides. We carry up to 1100 passengers on the Corson and the Minue. We carry up to 825 passents on the ferryboat Tides. We get the whistle signal from the SP to leave, say at 8:30. I make my docking. It is about a six-minute crossing. By the time we discharge the vehicles and passengers, pick up the load and return back to New York at a quarter of eight, the SP blows the whistle from the Island.

This goes on every 15 minutes that we are making a run.

Q Will you tell us a feature of ferryboats which is not applicable to other boats in the harbor?

A My understanding of a ferryboat, there is a specific license issued and an examination that I must take with the U. S. Coast Goard and it states that it is a double-ended vessel, two bows identical, two sterns identical. They have two rudders, one continual shaft, two wheelhouses, the range lights are in equal distance.

That is the description of the ferryboats by a rule. The Statend Isaldn is identically described in the rules. The Hart's Island is identically described in the rules.

Q Other boats in the harbor are not double-ended?

A There is not another identical vessel compared to mine in description I just gave.

Q That goes for tugs?

A Right.

Q That goes for the Circle Line --

A One bow, one propeller, one shaft.

Q None like the ferry?

A There is no double-ended ferry in the port but us and the City ferry.

Q Are you familiar with the Treasury Department wage order which was issued after the Coast Guard took control of Governors Island?

THE COURT: First, when did the Coast Guard take control of Governors Island?

THE WITNESS: The Coast Guard took control of Governors Island in June 1966, the 69th Street Ferry went out of existence in November 1964. When the Treasury Department took over the operation of the Island and the ferries we received a memo that they would pay us the wages back to 1965. They were effective July 31, 1966. They said they would pay the wages, cents per hour as the identical 69th Street Ferry crew classifications.

THE COURT: Do you have anything on that?

MR. GROSSMAN: Yes, your Honor, I offer it now.

THE COURT: Any objection, Mr. Lawyer?

MR. LAWYER: No objection.

xx (Plaintiff's Exhibit 2 received in evidence)

MR. GROSSMAN: May I read one paragraph from the memo on top of page 3?

THE COURT: Yes.

Q Is that what you are referring to, Mr. Whelan:

"Therefore, the proposal to (1) adopt the Army's current basic rates for ferryboat employees and add to them the July 1, 1965 increases to Staten Island ferry employees and (2) adjust these basic rates in the future by the cents per hour increases to Staten Island ferry employees appears to be reasonable and sound."

A That is right.

Q Was that procedure followed subsequently?

A That was the ending of our 1964 three-year contract they abided by with the 69th Street. Come 1967 we then were on a following three-year contract which was either the option of a 25% increase or the 30-hour work week which the City ferries obtained.

THE COURT: Wait a second here.

It says "adopt the Army's current basic rates for ferryboat employees."

Were the current basic rates for ferryboat employees the same as the Staten Island Ferry at that time?

THE WITNESS: Yes, sir.

THE COURT: As I gather it then this document created parity between the Staten Island Ferry?

MR. GROSSMAN: Correct, sir. And provided for a future policy of the same cents per hour increases to be received by the Governors Island Ferry employees as was to be received by Staten Island Ferry.

THE COURT: All right, go ahead.

Q Mr. Whelan, have you been active in the problem of wages for employees of the Governors Island Ferry?

A Yes, we had an association with 333. I was serving on the committee for approximately eight years, from May 1957 to approximately May 1965.

We had an engineer representive. We had an oiler representative. We had a deckhand representative. We had a representative from each department.

We went and met with the Army at various times, not so much as to negotiate wages but if some slight grievance came up where an oiler felt he was being abused to work on deck or the deckhand did not receive overtime that he was entitled to by going into a 16-hour stretch, it was just once a year that we met. We had very few

grievances with the Army.

Q Subsequent to that did you continue your interest in the wages received by you and your fellow employees?

A I was on top of it all along when the Coast Guard took over. We kicked it around among our fellow crew members, the Staten Island crew members. We had various meetings called at the union hall explaining just what they offered us.

Q Did you some time in 1969 have occasion to write to Honorable James J. Delaney at the House of Representatives in connection with your wage problem?

A Yes, sir.

Q And did you receive a reply from Congressman Delaney?

A Yes, sir.

Q I show you a letter dated June 13, addressed to you from Congressman Delaney, and attached to that is a copy of a letter which Congressman Delaney received from the Department of Transportation, United States Coast Guard, signed by W. J. Smith, Admiral, U. S. Coast Guard Commandant, and ask you whether this is what you received from Congressman Delaney.

A The date is June 13, 1969. This is Mr. Delaney's letter to me and this letter is the 11th of June 1969,

addressed to Mr. Delaney from the Commandant of the U. S. Coast Guard, correct, sir.

MR. GROSSMAN: Your Honor, I offer it.

MR. LAWYER: No objection.

(Plaintiff's Exhibit 3 received in evidence)

THE WITNESS: May I state my reason for writing Congressman Delaney?

THE COURT: I don't think it makes any difference.

MR. GROSSMAN: May I read a portion of the second paragraph of the letter which the Commandant wrote to Congressman Delaney?

"Since the rates being being paid to the Governors Island ferry personnel are greater than the prevailing rates" --

MR. LAWYER: Wait a minute. You did not specify.

MR. GROSSMAN: They are both in.

THE COURT: All right.

MR. GROSSMAN: "Since the rates being paid to Governors Island ferry personnel are greater than the prevailing rates of the total maritime industry in the New York Harbor, the Coast Guard adopted a policy to adjust its rates by the same cents per hour increases in basic rates for comparable officer and crew classifications in the City of New York-Staten Island Ferry schedule.

"This was done effective 3 July 1966 and again 28 August 1968."

When you received this letter from Congressman Delaney, the enclosure from the Commandant, had that always been your understanding?

A When I read that letter it was as plain as English that I was going to get the same cents per hour as that Staten Island Ferry counterpart.

Q You got this in June of 1969?

A Right.

Q Had you been receiving the increases?

A No, sir.

Q You never got them?

A I never got them.

THE COURT: From when to when didn't you get it?

THE WITNESS: From July 1st, 1967 was the beginning of our three-year contract.

THE COURT: July 1, 1967?

THE WITNESS: Yes, to August 28, 1968, approximately 14 months we didnot receive any money on this three-year contract.

THE COURT: You mean any increase?

THE WITNESS: We had received no increase, sir.

Q That put you,the paragraph that I read, was it

your understand that that put you in a tandem relationship with the Staten Island Ferry?

A Yes.

Q You were getting the same increases, is that right?

A I was supposed to, according to this letter. I was going to be put on parity with them.

MR. GROSSMAN: I offer at this time a letter dated 26 March 1969 addressed to Honorable Henry Helstoski, House of Representatives, and signed by A. A. Heckman, Captain, U. S. Coast Guard.

MR. LAWYER: No objection.

xx (Plaintiff's Exhibit 4 received in evidence)

MR. GROSSMAN: The letter which I have offered his Honor repeats the same pronouncement concerning the adoption of the Wage Board TreasuryDepartment ruling and its readoption on 28 August 1968; is that correct?

THE WITNESS: That is correct, sir.

Q Did you in August of 1968 get an increase?

A We got an increase, an interim increase in February 1969 retroactive to August 28, 1968.

Q So that beginning with August 1968, after you got the retroactive increase you were again in parity with the Staten Island Ferry?

A Yes, sir.

THE COURT: Hold it.

When did you receive this retroactive increase?

THE WITNESS: We got the first initial increase February 19, 1969.

It was finalized December 1969, which came to a total of 25% based on my pre-1967 wages.

THE COURT: That is not my question.

I gathered from the question put by counsel that they made up to you the lack of parity from July 1st, 1967 to August 28, 1968, by a retroactive pay increase?

MR. GROSSMAN: No, sir, the retroactive pay increase, as Mr. Whelan just said, was made in February of 1969.

If you want, I will ask him all over again. He said in February of 1969 they got a partial retroactive pay increase effective as of August of 1968.

However, your Honor, the 14-month period between --

THE COURT: I think you better ask questions of the witness.

MR. GROSSMAN: Your Honor, with Mr. Lawyer's consent, to make this thing much simpler, I have a group of charts and graphs which were prepared by the next witness that was going to take the stand.

However, I furnished Mr. Lawyer with a copy of

them and he has no objection to my introducing them.

He merely states they are not relevant but I think for purposes of following this testimony, they would be a great help and I offer them now.

MR.LAWYER: I don't object.

THE COURT: Can't there be a stipulation as to what happened with the increase without dragging it all out?

MR. GROSSMAN: It is all set forth in the chart.

THE COURT: What do I need a chart for? Can't I be told in a minute?

MR. GROSSMAN: If your Honor focuses his eye on the --

THE COURT: I would like to do it my way.

You say on 2-19-69 you received a retroactive increase?

THE WITNESS: I received an 8-1/2% increase retroactive to August 28, 1968.

THE COURT: You tell me that that did not create parity as of August 28, 1968?

THE WITNESS: It did not create parity. I was not on a part with the Staten Island hourly rate.

THE COURT: Then you received additionally --

THE WITNESS: Eleven months later, December 1969--

THE COURT: You received additional --

THE WITNESS: They gave us the additional increase to put us then on parity.

THE COURT: Retroactive?

THE WITNESS: To August 1968, sir.

THE COURT: You received an additional retroactive increase to August 1968 so that you were then in parity with Staten Island?

THE WITNESS: Yes, sir.

THE COURT: As of August 28, 1968?

THE WITNESS: Right, sir.

Q However, Mr. Whelan, am I correct in stating that the period from July 1967 to August 1968 --

THE COURT: He understands that.

Q -- was never in parity?

A There was no increase.

Q For a period of 14 months?

A No increase, no.

MR. GROSSMAN: May I offer the charts at this time?

THE COURT: It is unnecessary. Go ahead.

Q Did you receive any other increases after that?

A Parity of August 28, 1968 - we were hassling for increases that the Staten Island --

THE COURT: You have got me up to the end of 1969. As of that point you have parity.

When did you lose parity again?

THE WITNESS: We came into our next three-year contract starting July 1970.

THE COURT: That is a new three-year contract, July 1970?

THE WITNESS: Right.

THE COURT: And you did not get parity under that contract?

THE WITNESS: We did not receive an increase until March 5, 1972. We got 5.5, sir.

THE COURT: You are not listening to my question.

THE WITNESS: I didn't hear you.

THE COURT: We have no parity problem from August 28, 1968 to July 1970?

THE WITNESS: No, sir.

THE COURT: Now you say a new parity problem was created under your new contract?

THE WITNESS: We had a new three-year contract coming July 1st.

THE COURT: And that contract that you entered into in July of 1970 or was to start in July of 1970 gave you a pay less than Staten Island?

THE WITNESS: I did not receive anything in July 1970.

THE COURT: Did Staten Island receive an increase in 1970?

THE WITNESS: They had got retroactivity to 1970.

THE COURT: You are not listening to me. I don't care about retroactivity back to then.

On July 1st, 1970, were you receiving the same pay as Staten Island?

THE WITNESS: I was on a parity with Staten Island. Staten Island Ferry was in a hassle. They were hassling their own contract over there.

THE COURT: I am really not interested in that. Were you in parity?

THE WITNESS: Yes, sir.

THE COURT: When did you lose parity? What date?

THE WITNESS: We lost parity when the Staten Island Ferry license personnel and unlicensed personnel had settled their contract with the City.

THE COURT: And what did that provide?

THE WITNESS: That provided for a 20% increase from July 1st, 1970 to July 1st, 1971.

THE COURT: That was a retroactive increase?

THE WITNESS: Yes, sir.

THE COURT: So Staten Island received 20% increase July 1970 to July 1971?

THE WITNESS: Right, sir.

THE COURT: You did not receive a similar increase?

THE WITNESS: No, sir.

THE COURT: Therefore you were minus parity for that year?

THE WITNESS: Yes, sir.

THE COURT: What about the next year?

THE WITNESS: The next year was from July 1st, 1971 to July 1st, 1972. The City ferry received a 10% increase in wages.

THE COURT: Did you receive any increase?

THE WITNESS: March 5, 1972 we were granted a 5.5 increase.

THE COURT: And that was not retroactive for was it?

THE WITNESS: No, sir, that was not retroactive.

THE COURT: This I gather is under the program, the freeze program?

THE WITNESS: Right, sir.

THE COURT: That takes us then up to July 1972?

THE WITNESS: Yes, sir.

THE COURT: What is next?

THE WITNESS: July 1970 to July 1973 the New York City ferries were increased another 10% increase in wages.

THE COURT: What happened to you?

THE WITNESS: July 3, 1973 we were given another 5.5% increase.

THE COURT: That is the following year?

THE WITNESS: Right.

THE COURT: During the year July 1972 to July 1973 you received nothing?

THE WITNESS: We got nothing, sir.

THE COURT: What happened on Staten Island from 7/73 to 7/74?

THE WITNESS: From July 1970 --

THE COURT: July 1973.

THE WITNESS: From July 1973 the City, as I understand from the representative of the licensed personnel, they are in an impasse panel right now.

THE COURT: Therefore, they have nothing?

THE WITNESS: No, sir.

THE COURT: Still open? All right.

What did you receive after July 1st, 1973?

THE WITNESS: We got an increase April 1974.

THE COURT: Didn't you say you got something July 3rd?

THE WITNESS: July 3, 1973, I received 5.5% increase. And the next increase we received at Governors Island was

April 1974, approximately another 5.5% increase.

THE COURT: All right.

MR. GROSSMAN: At this point, your Honor, I offer the City contracts with the licensed and unlicensed personnel represented by their respective unions for the Staten Island Ferry from 1967 to 1970 and from 1970 to 1973 which contain the 20, 10 and 10 that Mr. Whelan told me about.

THE COURT: He told me about it.

What do we need it for? It is in the record. He testified under oath, unless he has misinformed me. It is already in the record.

THE WITNESS: May I add the last increase I stipulated that we got 5.5 in April. Also I think it was within a month they gave us another minor increase of about maybe another 5% or 5-1/2%.

THE COURT: I gather then, Mr. Lawyer, the witness and his folks would be under the same increase that you are? The same governmental increase?

MR. LAWYER: Of 5.5?

THE COURT: Everybody gets it except the judges.

MR. LAWYER: All federal employees, yes, sir.

Q Are you able to tell me for these various periods the rate that you received as compared with the rate, the

specific rate per hour, received by the Staten Island Ferry master in your case?

A That would bring you from July 1st, 1970 up to the present --

Q I am talking back to July 1968. You were receiving $5.09 from July 1967 to August 1968, is that correct?

A That was my rate of pay, $5.09 per hour.

Q And the Staten Island master at that point was getting $6.36?

A No, sir. The Staten Island Ferry master was getting approximately $5.20 per hour.

Q Between 1967 and 1968?

A Yes, sir.

THE COURT: I am lost.

The witness told me he did not have parity between July 1st, 1967 and August 1968.

MR. GROSSMAN: The 14-month period.

THE COURT: He just says he was getting more than the Staten Island Ferry man was.

THE WITNESS: I was getting less.

THE COURT: Ask your questions.

Q You were getting what between 7/67 and 8/68?

A Between 7/67 and 8/68 my rate of pay was $5.09

per hour.

Q What was the Staten Island Ferry?

A To my recollection it was $5.20 per hour.

Q I suggest to you that you may be in error.

Wasn't it $6.36?

MR. LAWYER: Objection.

THE COURT: He is in error. It is a matter of record.

MR. LAWYER: I don't think he is in error.

THE COURT: All right.

Mr. Lawyer syas that $5.20 is the correct figure.

MR. GROSSMAN: That is why I want to put the charts in.

MR. LAWYER: I won't object to Mr. Grossman stating what they believe the figures to be.

I withdraw my objection.

THE COURT: All right.

MR. GROSSMAN: May I respectfully again offer these charts.

THE COURT: If you want to build up the record with a lot of exhibits, it is all right with me.

MR. GROSSMAN: I believe that this has been based upon hours of research and reflects the whole picture and will make your Honor familiar with it at once, and we can

save a lot of time on testimony.

THE COURT: We are finished. There will be no more testimony on it. He has given it to me.

MR. GROSSMAN: May I put this in?

THE COURT: If you want to put it in, you may.

xx (Plaintiff's Exhibit 5 received in evidence)

THE WITNESS: This here $5.09 per hour was given to me in 1966 when when the Coast Guard took over. They raised me 15 cents an hour from $4.94 to $5.09.

I did not receive another penny until August 28, 1968. My pay was then increased 25%. I was increased to $6.36 per hour.

THE COURT: We know that. Why do you keep telling us?

Q That brought you in parity as you stated before, August 1968, for the first time?

A Yes.

MR. LAWYER: I would like to voir dire as to what he was putting that in. I want to know how it was prepared.

MR. GROSSMAN: It was prepared by the next witness.

THE COURT: We will hold it up for introduction for the next witness.

Q What are you receiving today per hour?

A $7.92 per hour.

Q What is the Staten Island Ferry master receiving today?

A He is getting $10.24 per hour.

THE COURT: $10 -- what?

THE WITNESS: $10.24 per hour.

THE COURT: But he is fighting for a retroactive increase?

THE WITNESS: To July 1st, 1973, yes. They are in an impasse panel now with the City.

Q Mr. Whelan, the Coast Guard or the Department of Transportation, did they at any time, subsequent to 1969-- let's take the dates of Congressman Delaney's letter -- June 11th, did they ever refer back or follow the Treasury Department wage order which was introduced as Exhibit 2?

A No, sir.

Q You never received the benefit of that wage order subsequent to that?

A No, sir.

Q Is that correct?

A Correct, sir.

Q In 1971, can you tell his Honor what negotiations, what discussions were going on, what were you told either directly by representatives of the Coast Guard through your

union representives, Department of Transportation, concerning an increase? What were they going to do?

THE COURT: I don't think it makes any difference.

I'm sorry, that is not probative proof of anything, what they were going to do.

What happened? He told me nothing happened.

Q Were you told that a survey was being made?

A Over the years there was supposed to have been periodic surveys made. Who they surveyed, who was on the survey teams, what conclusions they came to, what vessels they surveyed, I have never seen.

Q Are you familiar with a letter which your union representative, Mr. O'Hare, addressed to the Secretary of Transportation in 1972?

A I did see similar letters between O'Hare and the Secretary.

Q Was that where he was asking for some relief for the Governors Island Ferry personnel?

A In March 1971.

Now I recall. Mr. O'Hare had addressed a lette to the commanding officer on Governors Island seeking a 53% increase which was comparable to the maritime industry rates that they received in that contract, the three-year contract of 1970.

Q Were you told that the Department of Transportation was undertaking a survey of the port?

A I was told that they were going to survey -- I was not told -- the letter was sent back to Mr. O'Hare that after surveying costs and operations that they would be in touch with him.

Q Were you ever consulted by any survey team?

A No, sir.

Q Did you ever know of any survey team that came anywhere near your headquarters?

A No, sir.

Q Were any of your colleagues on the ferry ever consulted?

A None of our ferrymen were ever on a survey team. In fact, I was no longer connected with the committee with the union. In May 1965 I gave that committee job up.

MR. GROSSMAN: At this time I offer a letter dated May 1, 1971, addressed to Mr. Joseph O'Hare, President, Local 333, from the Assistant Secretary for Administration.

MR. LAWYER: No objection.

MR. GROSSMAN: Your Honor, this is part of the Civil Service file so that I don't have to offer it separately. However, I should like to read at this point a paragraph.

This letter is signed by William S. Hefflinger and his title is Assistant Secretary for Administration of the Department of Transportation.

He says to Mr. O'Hare, the head of the union, "Basically two techniques are available to federal departments when fixing wage rates administratively for marine employees, assuming the rates are not established by law.

"First, where it can be determined that an identical or virtually identical activity is being operated by private industry in the same area it is possible to adopt or parallel those industry rates for payment to federal employees.

"If, on the other hand, there is no exact parallel situation or if there exists a number of employers who can be considered representative of the same occupation or industry in the area then it is customary to conduct surveys of wages paid in that industry.

"Such information then provides a basis for establishing pay rates or pay rate schedules for the federal employees affected."

Mr. Whelan, in view of that statement by the Assistant Secretary for Administration, Department of Transportation, I ask you whether there was an identical activity in the Port of New York to the Governors Island Ferry?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q Do you consider the Staten Island Ferry to be an identical activity to the Governors Island Ferry?

A It is identically in construction doing the same functional work I am doing, docking right next door to me in the opposite slip.

MR. GROSSMAN: Your Honor, I should like to read another sentence from Exhibit No. 3, which is the June 11, 1969 letter from the Commandant of the Coast Guard to Congressman Delaney.

"The recent study of wages paid in a representative segment of the marine transportation industry in the New York Harbor revealed that while the ferry operations in the harbor are comparable in mission and types of craft they are not strictly comparable in terms of functions and responsibilities of personnel."

Mr. Whelan, I ask you, based upon your experience, to tell his Honor whether the functions and responsibilities of the personnel of the Governors Island Ferry are in any way different from the -

THE COURT: I am sorry, that is the same language that is in Heckman's letter to Congressman Stelkos[illegible].

Is he not talking about representative segments

of comparable work such as ferryboats?

His language is representative segments of the marine transportation industry in New York Harbor. That takes in everything, not limited just to ferryboats.

MR. GROSSMAN: Correct, your Honor.

I am merely trying to show your Honor that despite the guidelines set forth in 1969 by the second or third top man in the Department of Transportation they still did not follow an identical activity but went ahead and considered the total area and followed the second suggestion as if there was no identical or virtually identical activity.

THE COURT: If you read another part of Heckan's letter,"since the rates being paid to Governors Island Ferry personnel are greater than the prevailing rates of the maritime industry in New York Harbor" --

MR. GROSSMAN: Correct, your Honor. I am perfectly willing to abide by that.

The letter from Heckman as well as the one from the Commandant to Congressman Delany says "We are abiding by the Treasury Department memorandum" and this is dated 1969.

THE COURT: That was pending a study to be made.

MR. GROSSMAN: This was done effective July 31,

1966 and again 28 August 1968.

It has nothing to do with any study, your Honor. It says this was done. "We have followed the Treasury Department Wage Board directive."

THE COURT: What did you give me this Exhibit 4 for?

MR. GROSSMAN: For cumulative effect, your Honor. There was not one letter that can be said to have been an error although I will say, your Honor, that in examining the top personnel man of the Department of Transportation by deposition --

THE COURT: Don't argue with me, you have a witness on the stand. Let's get testimony.

MR. GROSSMAN: I am sorry, your Honor.

Q You heard me read the two techniques which are claimed to be available by federal departments.

Were those techniques followed?

A They adopted the technique, to our understanding, on their surveys, they went so far as Plum Island, 120 miles out of the area on one survey. Also they went to th Port Jefferson operation 62 miles out of the New York area.

That I do recall on some literature to the union or our union to the Coast Guard that they went out of the survey areas to seek lower paying rates.

This was given to us. They did not, to our knowledge, survey the Staten Island Ferryboats.

Q Did you ever see the results of any survey that was made by the Department of Transportation?

A No, sir.

Q Have they ever published any kind of survey?

A I never saw anything published.

Q Have you ever been consulted concerning any survey?

A Never.

Q Do you know whether your union was ever consulted?

A I think they may have been asked to participate on the original survey. I believe they turned it down.

In the second survey, I can't recall the year, they sent out I believe a delegate, Mr. Lyon[illegible], to go out with the survey team. But there was no representative from any members of the crew on the ferryboats.

Q And you have never seen the results?

A I have never seen the results, who they surveyed or the figures.

Q In the latter part of 1971 they were supposed to be making a survey, is that right?

A Correct.

Q Do you know whether they ever completed that survey?

A I have no idea, sir.

Q You do know that the freeze came on, is that correct?

A The freeze was enacted in August 1971, executive order.

MR. GROSSMAN: At this time I offer your Honor a letter addressed to Honorable Jonathan Bingham, Congressman, and signed by Glenn F. Young, Commander,U. S. Coast Guard.

MR. LAWYER: No objection.

xx (Plaintiff's Exhibit 6 received in evidence)

MR. GROSSMAN: I should like to read two sentences from the fourth paragraph. I would rather read the fourth paragraph.

"In response to a letter requesting a wage increase, Mr. Bonillas' union was advised that their request would be considered upon completion of studies relating to costs and other pertinent factors.

"This analysis revealed certain legal ramifications that were referred to the general counsel at the Department of Transportation for resolution.

"While these matters were being resolved and prior to conducting a survey, President Nixon by Executive Order 1-1-615 directed a 90-day wage freeze. "

Q There was no survey completed in 1971-1972?

A No, the freeze was on. We were stuck.

MR. LAWYER: I object.

THE COURT: How does he know?

MR. GROSSMAN: He was an interested party.

THE COURT: How would he know a survey was going on? It doesn't necessarily mean that he does not know that a survey was being made --

MR. GROSSMAN: This letter just stated, "And prior to conducting a survey"...

MR. LAWYER: I don't mind what the letter says. It is in evidence.

THE COURT: What Mr. Lawyer says is you are bound by what the letter said.

MR. GROSSMAN: I am delighted to be bound by these letters.

THE COURT: You are not listening. There is no point in asking the witness whether it is true or not because he does not know.

MR. GROSSMAN: Your witness.

MR. LAWYER: The second page of Plaintiff's 6, your Honor,"a detailed survey in the New York Harbor to determine actual pay rates for positions in the private sector has been completed."

CROSS-EXAMINATION

BY MR. LAWYER:

Q Mr. Whelan, you have indicated that you understood that surveys were taking place but you were not asked to participate, is that correct?

A Right.

Q Do you hold any particular position other than just being an employee on the ferry?

A That is all my title is. I have no connection with any committee, duties with any associations whatsoever.

Q Is there any other reason why you thought you would have been asked specifically to participate in the survey, you personally?

A No. I don't think-- I was not on the committee any longer. I gave it up in 1965. I did not expect to be put on any survey team.

Q You understood that your union was asked?

A I understand the union was asked on the original survey back in 1967 some time. They were asked to participate in a survey. To my knowledge they said they had the contracts on file and that there was no need for them to go on the survey. The contracts were here for the disposal, whoever wanted to read them.

Q So your representatives simply refused to participate, is that what you are saying in essence?

A Thatis to my knowledge.

Q How long a trip does the Staten Island Ferry make from Manhattan to Staten Island, sir?

A It is a half-mile approximately.

Q Approximately how long does it take?

A Six minutes.

Q The Staten Island Ferry, sir.

A You are taking me out of my field. I ride the boat once in a while. 25 minutes, say. According to the various crafts, some have higher speeds than others.

Q Approximately how much larger, not in terms of feet or square feet or inches, but just approximately how many times larger is the Staten Island Ferry than the Governors Island Ferries?

A Double the size, sir.

Q Sorry?

A Double the size, maybe greater.

Q Approximately how many times heavier, those tonnages?

A Two and a half times heavier than us.

Q Approximately how many times longer is the length of the run between the two ferries, that is, how many times

longer is the Staten Island Ferry run than the Governors Island Ferry?

A It would take 18, 20 minutes.

Q How long is the Governors Island Ferry run?

A Six minutes.

Q You stated that the wages of the Governors Island Ferry employees were in parity with the Staten Island Ferry basic wages back in 1965, is that your testimony in substance?

A Yes.

Q How do you know that, sir?

A By my pay slips, sir. My payroll change slips were given to me as my hourly rate of pay.

Q And does your payroll slip say that that is the Staten Island Ferry --

A No.

Q How do you know that?

A I speak with the Staten Island ferrymen and I ask them their hourly rates and we compare rates. We have meetings at the union and kick it around.

Q You are talking about what you heard years ago back in 1965?

A Right.

Q You have no physical document to establish that?

A I have my pay slips.

MR. GROSSMAN: I object. It is in the Treasury Department wage memo. It states that.

THE COURT: I am not sure it goes that far.

MR. LAWYER: May I have the exhibit.

I want to read part of Exhibit 2 in evidence.

"The current prevailing rates in the New York Harbor area are the City of New York-Statent Island Ferry rates. However, Coast Guard is not recommending Staten Island Ferry rates because they are based on operating ferryboats which are larger in terms of tonnage and distance traveled than the Governors Island Ferry and the comparable 69th Street Ferry and therefore they are higher following maritime industry practice than current Army rates."

That is all.

THE COURT: It is your point, Mr. Lawyer, that while they granted or indicated they would grant hourly increases that the Staten Island people got they were starting from a different level?

MR. LAWYER: Yes, sir. If the basic rates, as he suggests, were the same, I am saying it was purely incidental, but I am saying that was not true. They simply were not.

Q Mr. Whelan, you have also testified, have you not,

that parity was again achieved in 1968, that is, the raises retroactive to 1968?

A It is a little technicality. The Staten Island Ferries were not settled with their contract of 1970. In 1968 my salary was - August 28, 1968, I was granted a 25% increase. Put my pay from $5.09 to $6.36.

Q Have you testified in substance that the raises you got retroactive to August 1968 placed you in parity with the Staten Island Ferry rates?

A Hourly rates?

Q For basic wages.

A The Staten Island Ferry on the 1967 contract accepted the 30-hour work week in lieu of the 25% increase.

Q What was the hourly or the number of hours worked at that time by the Governors Island people?

A 40 hours per week.

Q You stated the hours worked by the Staten Island people were how many hours?

A I think 30, 32 hours they agreed to accept.

Q Is it still your testimony that you have parity with the Staten Island Ferry in view of that?

A I got $6.36 per hour.

Q For a 40-hour week?

A Right.

Q You have testified, I believe you have acknowledged earlier that the 1968 rates, as you understood it, were based on a survey in which you did not participate, correct?

A Right, sir.

Q Would you then acknowledge, sir, that if the 1968 increases were based on a survey that they could not have been therefore based on the Staten Island rates as such?

A Well, the comparability was that the Staten Island had the option of a 25% wage increase or a 30-hour work week. They took the shorter work week in lieu of the 25% wage increase.

Q My question is simply this, sir: If the wage rate was fixed by a survey, it was not fixed then by looking at the Staten Island wage?

A No, they gave us the 25%, whatever the parity was.

Q If there was parity, it was not because of what the Staten Island wage rates were in and of themselves?

A Wages were entirely different at that point.

MR. LAWYER: No further questions.

REDIRECT EXAMINATION

BY MR. GROSSMAN:

Q What was your hourly rate after the retroactive

increase effective August 1968?

A After 1968?

Q After the effective retroactive increase.

A $6.36 per hour.

Q And what was the hourly rate beginning in August 1968 of the Staten Island Ferry?

A August 1968?

Q Right.

A Their hourly rate I would say was probably $5.20.

Q 1968.

A That was when they were in the 30-hour work week.

Q But what was the hourly rate? Wasn't it in parity at that point?

A I said it was in parity in the beginning of the Coast Guard taking over in 1966. We had parity with Staten Island at that moment.

Q Then there was the 14-month period where you received no increase?

A No increase whatsoever on the 1967 contract.

Q And the Staten Island Ferry was receiving $6.36?

A The Staten Island Ferry took the 30-hour work week.

Q But they were getting $6.36 before they took the 30-hour work week, weren't they?

A Not to my knowledge, sir.

MR. GROSSMAN: No further questions.

MR. LAWYER: No more questions.

THE COURT: You may step down.

(Witness excused)

MR. GROSSMAN: Mr. Lieto.

R I C H A R D L I E T O, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. GROSSMAN:

Q Mr. Lieto, are you employed on the Governors Island Ferry?

A I am.

Q How long have you been so employed?

A Since 1957; 1957.

Q Continuously?

A Yes.

Q What is your position?

A I am a chief engineer on the Governors Island Ferry.

Q Does that require a license?

A It does.

Q Does that license entitle you to act as chief engineer on what other type of craft?

A Well, any craft up to 2500 shaft horsepower, steam or diesel.

Q Would that include the Staten Island Ferry?

A No, sir.

Q What is required as far as licensing there?

A I would have to have a minimum of 4000 horsepower. I would have to have my horsepower raised up to 4000.

Q What would that require, sir?

A Well, I would have to sit and take an exam to do that.

Q Would you describe in terms of functions and responsibilities your work as a chief engineer and the work of a chief engineer on the Staten Island Ferry?

A Well, I supervise one oiler. I am in charge of the engine room and ship's machinery during an eight-hour tour of duty. I take care of routine maintenance and minor repairs and I keep logs and other records, and I take on fuel and water. I keep a safe operation going.

And the duties of an engineer on the Staten Island Ferry are substantially similar.

Q Have you had occasion or do you know any engineers on the State Island Ferry?

A Yes.

Q Have you had occasion to discuss your respective functions and responsibilities?

A Yes. Although the man I did know is no longer there. He is on his pension now.

Q Have you been active with respect to your wage increases in the past years and the activities with the union and the Coast Guard?

A Yes, I am a shop steward for the engineers.

Q And you have kept yourself familiar with all of the developments?

A I have.

Q Did you at my request prepare some charts and graphs concerning the comparative rates received by the four categories of employees of the Governors Island Ferry with those of the Staten Island Ferry?

A I did.

Q And will you tell his Honor where did you obtain this information from?

A I obtained our rates from our own stubs and pay records and I obtained the Staten Island rates from the union documents.

THE COURT: You are now going to offer the chart?

MR. GROSSMAN: I have offered it. It's been marked

Exhibit 5.

THE COURT: It has not been admitted.

MR. GROSSMAN: I now offer it.

THE COURT: You may voir dire, Mr. Lawyer.

VOIR DIRE EXAMINATION

BY MR. LAWYER:

Q Who helped you prepare Plaintiff's Exhibit for identification 5? Who helped you prepare it, sir?

A I did it on my own. I didn't have any help.

Q Do you have any accounting-type experience?

A No, sir.

Q Approximately how many documents did you have from which you worked to end up with this Exhibit 5?

A Maybe seven or eight documents.

Q How far back did they go to, that is, in terms of age, what years?

A 1966, 1967.

MR. LAWYER: I have no objection.

(Plaintiff's Exhibit 5 received in evidence)

xx

BY MR. GROSSMAN:

Q Mr. Lieto, I give you the original sheets that you gave me and ask you to look at them.

Will you explain to his Honor the various columns that you have there?

First of all, tell me what are these charts? What are the ten sheets that we have here?

A Well, I have four sheets of wage claims, one for each category, and I have four wage change graphs which is also one for each category, and I have two sheets which are tabulations of the wages on the Staten Island Ferry, and on the Governors Island Ferry over the period of time under discussion.

Q Can we take the second sheet dealing with your own pay rates?

You say wage claim 7/67 to 2/1/75, Engineers, Governors Island Ferry. You calculated on how many hours?

A On 2080 annual hours and on 193 hours per month.

Q And how many different periods have you broken this down into?

A I think it is nine periods.

Q Why did you break it up into those periods?

A Well, each period signifies a change in wages either on the Governors Island Ferry or on the Staten Island Ferry.

Q For example, in the first period from 7/67 to 8/68, you have a period of 14 months and the rate you received was what?

A $4.91 per hour.

Q And the rate received by an engineer on the Staten Island Ferry at that point was what?

A $6.13 per hour.

Q The second period is a period of 23 months.

You heard Captain Whelan testify, is that right?

A I did.

Q And is that the period which as a result of a retroactive pay increase, which came much later, but which was made retroactive to August 1968, you became in parity with the Staten Island Ferry?

A That is correct.

Q And for the 14-month period before that you had received no increase whatsoever?

A That is correct.

Q Then beginning 7/70, is that when the 1967 to 1970 contract for the Staten Island Ferry went into effect?

A Pardon me?

Q Beginning July 1970, is that the period when the three-year contract of the Staten Island Ferry went into effect which contained a 20, 10 and 10 increase; is that correct?

A Correct.

Q And the 20% increase was for the first year, is

that correct?

A That is right.

Q The 10% for the second year?

A Right.

Q And the 10% for the third year?

A Right.

Q And that explains why the changes received by the Staten Island Ferry engineers, is that correct?

A Yes, that is correct.

Q And during that period you received one increase effective March 1972, is that correct?

A Correct.

Q How did that increase come about?

A Well, that was a 5.5% increase and it was authorized by Executive Order 111639 dated January 12, 1972.

Q Then beginning on 7/73 you got another increase and that was the other 5.5 increase for the following year?

A Right.

Q Tell us what the other increases are in the last two periods?

A Well, on 4/1/74 we received a 5.5 interim increase and on May 12 of the same year after the wage freeze on government employees came off,we received an additional 6 or 6.1% increase.

Q So that today you are receiving $7.64 per hour, is that correct?

A That is correct.

Q And you are working a 40-hour week?

A That is correct.

Q And the Staten Island engineers are now receiving what?

A $9.91 per hour.

Q They are working a 30-hour week?

A That is correct.

Q But the hourly rate is $9.91?

A Yes.

Q And if they work in excess of 30 hours, what do they get?

A They get time and a half for overtime.

Q That is under the terms of their contract?

A Yes.

Q And you have examined those contracts --

A I have.

Q --at the union offices and copies which you obtained otherwise?

A I have.

MR. GROSSMAN: Once again at this time I offer the actual contracts of the Staten Island Ferry for the two

periods, 1967 to 1970, and 1970 to 1973

MR. LAWYER: No objection.

MR. GROSSMAN: There are two separate unions, one for licensed employees and the other for unlicensed.

You have two contracts for each for the period from 1967 to 1970 and for the period from 1970 to 1973.

THE COURT: Plaintiff's Exhibit 7, two contracts for licensed employees, is that right?

MR. GROSSMAN: Two for licensed employees and two for unlicensed.

THE COURT: These are the licensed ones?

MR. GROSSMAN: Yes, sir.

THE COURT: That will be Exhibit 7.

Plaintiff's Exhibit 8 will be two contracts for unlicensed.

xx (Plaintiff's Exhibit 7 and 8 received in evidence)

Q I ask you to turn, Mr. Lieto, to the sixth page which is entitled Engineer's Wage Graph, 7/66 to 2/75.

A I have that.

Q Will you please tell his Honor what you attempted to do by this graph?

A Well, your Honor, I was attempting to show wage changes on the Governors Island Ferry and Staten Island

Ferry over a period of time.

On the horizontal line it shows time, and the vertical line on the left shows the hourly rate, and the vertical line on the right shows the percentage changes of hourly rates, and the cross-hatched areas show the departure from wage parity. And the area of the cross-hatched areas is proportional to the amount of lost earnings. And the dates of all the wage changes on both units are also entered on the graph.

Q And you did the same with respect to the other categories of employees on the other graphs, is that correct?

A I did.

Q Are you familiar with when the 69th Street Ferry ceased operations?

A Yes, it was in November of 1964.

Q Will you tell us what was happening with the wage rates at that point?

A Well, at that time our wages changed in timing and in amount at the same time as on the 69th Street Ferry.

Q In what way? Tell us what took place.

MR. LAWYER: What year are we talking about?

THE WITNESS: 1964.

Q That was when the 69th Street Ferry went out of

business?

A Oh, after the 69th Street went out of business, we got a raise in June of 1965 and a raise in June of 1966 which was based -- which was equal to raises received on the Staten Island Ferry.

Q Was that under the Treasury Department Wage Order?

A Yes.

THE COURT: You are carefully skipping something here. That was, were they receiving the same rate of pay in 1964 as the 69th Street Ferry, and the Staten Island Ferry?

I gather from the portion of the letter written by Mr. Lawyer that prior to the date on Exhibit 5 there was no parity between Staten Island and the Governors Island people.

All they agreed to was to give you parity of increase but you-- is that right, Mr. Lawyer?

MR. LAWYER: That is my position.

THE COURT: That is what I gather and that is what the letter says. The letter does not say you were getting parity of salary. The letter says you get parity of future increases but not parity of salary.

Q Did you getan increase when the 69th Street Ferry went out of business?

THE COURT: That isn't the point.

What was he getting before the 69th Street Ferry went out of existence and what was 69th Street getting?

Q Will you tell his Honor that?

A We got the same hourly rate as the 69th Street Ferry got before the 69th Street Ferry went out of business.

Q Exactly the same?

A The same hourly rate.

Q Will you follow up and answer his Honor's question?

What happened immediately after?

A In June of 1965 we got the same increase as the Staten Island Ferry got.

THE COURT: But your salary was not the same as the Staten Island Ferry, was it?

THE WITNESS: I think it was, your Honor.

THE COURT: This thinking I am sure can be proved very easily.

Let's take a short recess.

(Recess)

THE COURT: You may proceed.

Q Mr. Lieto, to go back to the Engineer's Graph, there was a period from 8/68 to 3/72 where there was no increase whatsoever, is that correct?

A Yes, that is over a period of three years and nine months.

Q And then for the next year and a half your only increase was 5.5?

A That is correct, over a four-year and nine-month period of time we had a 5.5 increase only, a single increase of 5.5% over a four-year ten-month period of time.

Q But from the first period where there was no increase whatsoever --

A That was three years,nine months, no increase.

Q The Coast Guard or the Department of Transportation, did they make any surveys that you know of at that time?

THE COURT: What period are you talking about?

MR. GROSSMAN: From 8/68 to 3/72. The period of over three years when there was no increase whatsoever.

THE COURT: I thought they got a retroactive increase.

THE WITNESS: This is from 8/68.

Q In other words, the retroactive increase began 8/68 but from that point on to 3/72, a period of over three years, there was no increase whatsoever?

A Yes, sir.

THE COURT: I gather from 8/68 to July 1970 --

MR. GROSSMAN: March 1972.

THE COURT: You are not listening. From 8/68 until July 1970 nobody got an increase, not even the Staten Island people got an increase.

MR. GROSSMAN: That is correct.

THE COURT: Why are you worrying about that? You can't argue about that period, can you?

MR. GROSSMAN: No, sir.

THE COURT: So you start with July 1970.

MR. GROSSMAN: Right.

THE COURT: From July 1970 to March 1972 you did not get an increase.

MR. GROSSMAN: Correct.

Q Were there any surveys made during that period that you know of?

A None to my knowledge.

Q When the Treasury Department Wage Order of 3 July 1966 was put into effect, did you consider that that put you in a tandem relationship with the Staten Island Ferry?

THE COURT: That is not up to the witness; that is up to the document.

MR. GROSSMAN: All right, your Honor.

I offer a letter dated 18 August 1969 addressed to Honorable John M. Murphy, House of Representatives, and signed by P. E. Trimble, Vice Admiral, U. S. Coast Guard,

Acting Commandant.

MR. LAWYER: No objection.

xx (Plaintiff's Exhibit 9 received in evidence)

THE COURT: All right.

MR. GROSSMAN: I should like to read from that letter a short part. The end of the third paragraph says:

"The survey revealed two firm facts. There is no prevailing rate for the maritime industry and (2) all wages are established through collective barain-ing with the local maritime unions."

Q Did the Coast Guard when they took over adhere to the Treasury Department Wage Order at any time?

A Well, they gave us a raise--

MR. LAWYER: I object to that.

THE COURT: Sustained.

Q Were you told that there was a previaling wage rate which the surveys were to determine and which the Department of Transportation would follow?

MR. LAWYER: I object to the form.

THE COURT: Sustained.

Q Did you ever receive any information that the Coast Guard would follow a prevailing wage rate?

A Well, yes.

MR. LAWYER: Objection to any further answer.

THE COURT: Sustained.

Q What was that information you received?

MR. LAWYER: Objection.

A It was in letters from Congressmen.

THE COURT: You mean this letter?

This letter does not sustain that.

Q Mr. Lieto, would you tell us something about the condition of the market of engineers?

Are you familiar with that?

A Yes.

THE COURT: I assume you mean the availability of engineers?

MR. GROSSMAN: Yes.

THE COURT: The labor market.

A I understand that there is a shortage of engineers in the port area.

Q How do you understand that?

A Well, I was offered jobs immediately if I ever wanted to change jobs and the officials in the union have told me that.

Q Did you, sir, hand me this article from the Sunday News of August 11, 1974?

A I did.

MR. GROSSMAN: Your Honor, I offer it in evidence.

THE COURT: The Daily News is not proof.

MR. GROSSMAN: I am talking about the availability of openings for engineers, masters, and others. I am talking about the availability --

THE COURT: That is not the way to do it.

You have a Labor Board here who keeps statistics on this. They have the official statistics.

MR. GROSSMAN: But this says --

THE COURT: No. What a newspaper says does not necessarily mean it is true.

MR. GROSSMAN: I offer at this time a memorandum on the stationery of the Department of Transportation dated November 16, 1973. Subject: Special Wage Schedule, Maritime Employees of Governors Island, New York, from the Director of Personnel and Training to the Chief Civilian Personnel Division signed by R. J. Alfeltis.

MR. LAWYER: No objection.

THE COURT: That will be Plaintiff's Exhibit 10.

(Plaintiff's Exhibit 10 received in evidence)

xx MR. GROSSMAN: I should like to read the last paragraph from this memorandum.

THE COURT: I just got a call from upstairs. We will have to adjourn until two o'clock.

MR. GROSSMAN: Thank you, sir.

(Luncheon recess)

AFTERNOON SESSION

2:00 p.m.

R I C H A R D L I E T O, resumed:

THE COURT: You may proceed.

MR. GROSSMAN: I believe, your Honor, we were at the point where I had just introduced Exhibit 10 which is the memorandum of November 18, 1973.

I would like to read the last paragraph from that.

"The Civil Service Commission decision has the impact of compelling us to pay unlicensed ferryboat employees rates that are 30 cents per hour below what our survey shows to be appropriate. Similarly we are paying licensed personnel rates that are 40 cents per hour below what our last survey shows to be appropriate.

"At some future date when the current wage controls are relaxed it will be necessary to pick up this lag in wage rates applied to ferryboat employees."

Your Honor, at this time I respectfully request that Mr. Lawyer, pursuant to a notice to produce, produce the directive, order or announcement of the Coast Guard which is referred to in Exhibits 3 and 4 concerning the readoption of the Treasury Department Wage Order on 28 August 1968.

MR. LAWYER: I don't have it. I don't think there is any such thing. I received a notice to produce two or three days ago. I read this. My interpretation of the facts and my position here is that as far as I know it does not exist because he has a wholly wrong theory.

MR. GROSSMAN: I ask that the Court then take judicial notice based upon the two communications to two different Congressmen, Congressman Delaney and Congressman Stelkoski, Exhibits 3 and 4, in which the following statement appears --

THE COURT: You can't take a piece of it out. I will take the entire communication but I am not even sure that is sufficient. The mere fact that somebody writes to a Congressman does not mean that that is the official position of the Government as embodied in some ruling of an appropriate body.

MR. GROSSMAN: This is not somebody writing to a Congressman. This is the Commandant of the United States Coast Guard whose appointment as Commandant was approved.

THE COURT: Allhe says, if you are reading the document I think you are, that they will give to the employees the same per hourly increase that the Staten Island people receive, not that they will have parity of salary.

MR. GROSSMAN: I do not claim parity of salary;

parity of increase.

THE COURT: Come on, Mr. Grossman. This is a trial, it is not a summation. It is not an argument.

Mr. Lawyer, do you agree with that or don't you?

MR.LAWYER: I agree with what your Honor says.

MR. GROSSMAN: It merely says parity of increase, not parity of salary.

THE COURT: You are not talking about parity of salary?

MR. GROSSMAN: No, sir, I am talking about parity of increase and that is all that is required under the definition of tandem relationship in the Economic Stabilization Act. It says parity of increase.

THE COURT: I don't know if that is tandem or not. That is for some other part of this trial.

MR. GROSSMAN: I respectfully request that you take judicial notice of the fact --

THE COURT: You have that in evidence,haven't you?

MR. GROSSMAN: Yes, sir.

THE COURT: Period.

MR. LAWYER: I might point out that if that is his position the whole theory of the case just changed about three seconds ago.

THE COURT: I would think so, too. Your theory

of your case, as I understood it, was that the salaries were to be the same. You are now saying no, that is not the theory of your case, the theory of your case is that the increases that might be given should be the same and this chart, my friend, is based on parity of salary, not on parity of increase.

MR. GROSSMAN: This chart merely exhibits, your Honor, when there was parity of salary but the chart, the purpose of it, is to show when increases were granted or not granted pursuant --

THE COURT: The purpose of that chart, according to the amounts you claim in there is based on difference in parity of salary.

Continue.

Q Mr. Lieto --

THE COURT: That's why I did not want to take it in the first place but you insisted I take it. Now I have got it and now I tell you it does not stand for anything as far as I am concerned.

Next point.

Q Mr. Lieto, will you refer again to the engineer's wage graph, that is Item No. 6 on your charts.

A I've got it.

Q Does the dotted line, sir, indicate anything

different or in addition to the fact of what increases were received by the Staten Island Ferry?

A It also indicates the changes in wages of all other units in the harbor as well because the Staten Island Ferry has wage parity with other units in the harbor.

Q In other words, all of the other units in the harbor which have been considered in surveys receive parity inwages with the Staten Island Ferry?

A Proportional wages are kept. All the changes in wages of all the units are in the same proportions. All the wage relationships are maintained from year to year and from contract to contract between the Staten Island Ferry and other units in the harbor.

MR. GROSSMAN: Thank you. Your witness.

CROSS-EXAMINATION

BY MR. LAWYER:

Q How long have you worked for the Governors Island Ferry system?

A Seventeen years.

Q You stated in your testimony, I believe in substance, that it was your understanding that there are a lot of openings for engineers in this area?

A Yes.

Q Did you apply for any of those jobs yourself?

A Pardon?

Q Did you apply for any of those positions as an engineer yourself?

A No, I did not.

Q Do you know whether any of the plaintiffs in this case applied for any such positions?

A I don't know that.

Q Do you know whether all of the plaintiffs in this case are still employed by the Governors Island Ferry system?

A I think they almost all are.

Q Almost all?

A Almost all.

Q Who quit?

A I have to look back at the documents in order to say that.

THE COURT: Will this be helpful to you? These are the names of all the plaintiffs in this case.

A Here we have the name of Frank B. Jones and he took his pension about a year and a half ago.

Q He did not go to one of these jobs as an engineer?

A I don't know whether he has a different job now or not.

Q You just don't know?

A I just don't know.

Then we have George S. Brito. He quit and took a job --

Q Did he take one of those engineering jobs that you mentioned were available?

A He took a job as an oiler on the Staten Island Ferry. He had five years on our job and he was a permanent man and he took a job in the Staten Island Ferry and he made himself a couple of thousand dollars more.

THE COURT: What is his name?

THE WITNESS: George S. Brito.

Q Do you know whether thatposition that he opened up and left was subsequently filled on the Governors Island Ferry system?

A I don't know that.

Q You don't know one way or the other?

A I assume it was filled because we have a full staff.

Q Have you for the most part always maintained a full staff, sir, over the last several years?

A I think you would have to ask my supervisor that question.

Q Have you heard of a lot of openings on your staff for the Governors Island Ferry over the years, that it is

hard to get people to go to work there?

A That would be off the top of my head.

Q Take it off the top of your head.

A Yes and no off the top of my head.

Q I will take that answer.

MR. LAWYER: I want to read from a document already in evidence as part of that administrative file and I believe it is Plaintiff's Exhibit 61.

The letter dated June 30, 1972 from George --

THE COURT: What are you reading from?

MR. LAWYER: A letter dated June 30, 1972.

THE COURT: Is that in the beginning, middle, end?

MR. GROSSMAN: Page 20, your Honor.

THE COURT: All right.

MR. LAWYER: The paragraph on the first page at the bottom, the last paragraph on the page:

"Turnover among these ferryboat employees is not high and occurs most frequently among unlicensed personnel. The base experiences very little difficulty filling vacancies because other employees on the base eagerly seek these vacancies.

"The ferryboat wage schedule provides higher wage rates than does the CFWF New York, New York wage schedule for most non-supervisory wage rates."

THE COURT: What does CFWF mean?

MR. LAWYER: Coordinated Federal Wage System in which most graded employees fall under.

MR. GROSSMAN: May I respectfully ask your Honor to take judicial notice--

THE COURT: We are in the middle of a trial. Mr. Lawyer is conducting cross-examination of your witness.

Q You stated that you have been an employee for the Governors Island Ferry facility for approximately seventeen years.

A Yes, sir.

Q For all that period you were a federal employee, is that correct?

A Right.

Q And you have no reason to try to find a job with the Staten Island Ferry system, is that correct?

A I found reason.

Q But you don't leave?

A I didn't leave. That speaks for itself.

MR. LAWYER: That is all.

MR. GROSSMAN: No further questions.

THE COURT: You may step down.

(Witness excused)

MR. GROSSMAN: Mr. DiMaggio.

ANTHONY DiMAGGIO, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GROSSMAN:

Q What is your occupation?

A Director of the New York Inland and Harbor Contracts of District No. 1 Pacific Coast District Marine Engineers Beneficial Association.

Q Does your organization represent the licensed personnel of the Staten Island Ferry?

A Yes.

Q Has your organization entered into contracts with the City of New York beginning in 1967 to 1970 and 1970 to 1972?

A Yes.

MR. GROSSMAN: Your Honor, I refer to the two contracts which have been marked Exhibit 7, sir.

Q With respect to the 1967 to 1970 contract -- have you got a copy in front of you?

A No, I don't.

Q There are certain hourly rates set forth in that contract, is that correct?

A Yes.

Q On page 6 thereof?

A Yes, sir.

THE COURT: Which are you referring to?

MR. GROSSMAN: On the first contract, your Honor, the 1967 to 1970.

THE COURT: Page?

MR. GROSSMAN: Page 6.

THE COURT: Go ahead.

Q About four lines from the top it says: Captain, hourly rate $5.29.

Would you please explain to his Honor what the $5.29 represents and whether that is really the effective rate or what the effective rate is at that particular time?

MR. LAWYER: Objection.

THE COURT: Overruled.

A When this contract became effective, which was July 1, 1967, the ferryboat officers went from a 40-hour week to a 30-hour week but actually worked four- eight-hour days, two hours a week was considered time and a half and computed in their annual salary. This $5.29 hourly rate is still the rate based on the 40-hour week, just on paper it shows $5.29.

The true hourly rate, if you were to compute it by a 32-hour week would be $7.03. But when a man worked

by the hour, the hourly rate stayed the same but the annual rate was increased by approximately 7-1/2% plus a reduction in hours.

Q Have you got any figures to show--

THE COURT: I am at a loss to understand what you are talking about. It says here in the contract starting on page 5, "Employees who receive temporary appointments in the title mentioned below shall be paid on an hourly or daily rate, as the case may be, $5.29 for the first 30 hours of any calendar week."

Are you saying they work more than 30 hours?

THE WITNESS: Yes, they work 32.

THE COURT: Is that in the contract, they are entitled to two hours' overtime?

THE WITNESS: Yes, it is right on Section 2 right under that, "Work performed in excess of 30 hours per week and/or in excess of eight hours shall be paid at the hourly rate" --

THE COURT: That is not what I am asking you.

Where in the contract does it say they guarantee two extra hours overtime?

THE WITNESS: You have to go to the work year on page 4 at the top where it says in full "for the regular work week for the operation of ferryboats as practiced in

the Department of Marine and Aviation; that is, four 8-hour tours per week which shall be consecutive." Four 8-hour tours per week is 32 hours which would mean that two hours would be time and a half every week.

In the next contract it is spelled out specifically.

THE COURT: I don't care about the next contract. Therefore they got time and a half for the extra two hours?

THE WITNESS: Right.

THE COURT: That would come out to how much?

THE WITNESS: When you worked it out per annum it would give you the per annum salary that appears on page 3, for a captain it would be $11,732 per annum.

THE COURT: This fellow would receive $174.30 a week as his normal pay?

MR. GROSSMAN: Yes, your Honor, if that is what you computed.

My point here is that upon a readong of this contract I am trying to explain why the hourly rate would not compare with the chart which was submitted before to show how the $5.29 is corrected.

That is all, your Honor.

THE COURT: What do you claim the hourly rate should be?

MR. GROSSMAN: The hourly rate is $6.36.

THE COURT: How do you arrive at $6.36?

MR. GROSSMAN: With time and a half on those two hours.

THE COURT: You divide the $174 by 32 hours to get an hourly rate?

THE WITNESS: You would divide the annual rate by 1664 hours to get an hourly rate which gives you $7.05 an hour.

THE COURT: Where do you get 1664?

THE WITNESS: That is 32 hours times 52 weeks gives you 1664 hours. The true hourly rate would be $7.05 but when I negotiated this contract the City being what it is--

THE COURT: You didn't do too badly.

THE WITNESS: No, I didn't. When you get a reduction in hours with the same salary plus an increase in salary the hourly rate should have stayed at the 40-hour rate so that every other City employee would not be screaming that how can you reduce them weekly with an increase in annual salary and an increase in hourly rate.

When we get to the next contract you will see that there is an enormous jump when the true hourly rate was determined and it is almost triple.

THE COURT: Go ahead.

Q Will you take the next contract and tell us what the hourly rate there was?

THE COURT: So you say the hourly rate was how much in this contract?

THE WITNESS: The true hourly rate would be $7.05.

THE COURT: Do you follow that, Mr. Lawyer?

MR. LAWYER: I am listening.

THE COURT: Do you follow what he says?

MR. LAWYER: Yes.

Q Would you tell us what the hourly rate was in the next contract?

A Well, for the first year --

Q Will you identify the page that you are reading so the judge can follow.

A Page 8 on top. For the first year effective 9/1/70 it jumped to $8.46 an hour. The increase was 20%.

If you took 20% of $5.29 you can't possibly come up with $8.46.

Q Will you explain how you come up with it?

A The City first on paper put the true hourly rate as $7.05 and then gave us an increase of 20% of $7.05 which gives you $8.46.

Q The second contract provided over a three-year

basis increases of 2[illegible], 10 and 10, is that correct?

A Yes.

Q Will you tebl his Honor on what basis you secured the 20, 10 and 10?

A The practice with the City has always been to offer the ferryboat licensedand unlicensed personnel the harbor -- the so-called harbor pattern. When I say harbor pattern, I am talking about the private towboat industry, Local 333 negotiates with the towing association.

Q Are the men who you represent in the Staten Island Ferry in t[illegible]em with the rest of the harbor?

A In increases, yes.

MR. LAWYER: Objection.

THE COURT: It is not for you to tell me that they are in tandem. I draw that conclusion.

MR. GROSSMAN: I am merely --

THE COURT: I won't listen to him.

Q Will you proceed and tell us on what basis you receive 20, 10 and 10?

A Yes. When contract negotiations come we follow - the harbor usually negotiates in February of theyear. In other words, like our rate was 7/1/70. They negotiated in February of 1970 and they negotiated a 20, 10 and 10 for the tugboats. That is all there is in the harbor, that

is with the private sector. So the City, we go into negotiations or I go into negotiations and the City would generally offer us the same 20, 10 and 10.

At this particular contract and the one I am in right now it was unacceptable to us. We rejected it and we went to factfinding which we are in right now.

Q On this contract you say you went to factfinding?

A Yes, for more.

Q What happened?

A The factfinders awarded us the same as the harbor. I didn't obtain any more.

Q 20, 10 and 10 or a total of 40?

A 40.

Q Did you subsequently, sir, have occasion to go to the Federal Pay Board to get approval of this when the Economic Stabilization Act came into being and the freeze came in?

A Yes, it was already in being by the time we signed this agreement and the City recommended to the Pay Board to approve it and the union naturally asked for approval. We had to file for an exception to the guidelines.

Q To the 5.5?

A Yes. There is an addendum to this contract even as regards uniform allowances where the City recommended

to the Federal Pay Board attention that this exceeded the harbor pattern, an increase of $15 for uniform allowance. They were opposed to it. There was no benefit or relationship that we should get it but if the Pay Board agreed, the City would agree.

The City agreed to the whole thing and there is a decision that I have in my possession. I don't have it with me where they based it on a tandem relationship with the area.

Q And the Pay Board approved the 40% that was given in this contract?

A Yes.

MR. GROSSMAN: No further questions.

CROSS-EXAMINATION

BY MR. LAWYER:

Q Did you say you are an official of the National Maritime Union?

A The Marine Engineers Beneficial Association.

MR. LAWYER: No further questions.

THE COURT: You may step down.

(Witness excused)

MR. GROSSMAN: Mr. Rosenthal.

S I M O N R. R O S E N T H A L, called as a witness by the defendant, being first duly sworn,

testified as follows:

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. GROSSMAN:

Q Are you an employee of the Governors Island Ferry?

A Yes.

Q In what capacity?

A Deckhand.

Q How long have you been so employed?

A 25 years.

Q Were you informed of the Treasury Department Wage Order effective 3 July 1966?

A Not directly, no.

Q You heard about it?

A Yes.

Q Did you ever receive the benefits which were provided there, namely, increases in the same cents per hour as was received by comparable positions in the Staten Island Ferry?

A Yes.

MR. LAWYER: Objection.

THE COURT: Overruled.

Q YOu did receive it?

A Yes.

Q When?

A Through the union. We had belonged to the union at that time, which we still do, and we were told that we would receive the same things the Staten Island Ferry got.

Q At what point?

A When the Coast Guard would take over they gave us money tocomply with the three years of which the Army had left over in 1966, July 1st, 1966, ten cents an hour.

Q What were the next increases that you received?

A The next increase that I received was on February 24, 1969, retroactive to August 1968, a partial increase of 25% that the City boats had already received.

Q Did you receive any increases after that, sir?

A Yes, I did. On December 17--

MR. LAWYER: I object. He appears to be reading from cards. I don't really care about that as long as it is clear.

THE WITNESS: I had written down --

THE COURT: He had written down the factual information.

MR. LAWYER: Very well.

A On December 17, 1969 we received a balance of 21% because the unlicensed men did not receive the full

25% that the other personnel on Governors Island did receive. We only received 21%, unlicensed personnel, which was also retroactive to August of 1968.

Q You are, as a deckhand, unlicensed, is that correct?

A Yes, I am.

Q And the oilers, the other category are unlicensed?

A Yes, they are.

Q And you are represented by Local 333 of the National Maritime Union?

A Yes.

Q Is that correct?

A Yes.

Q Did you thereafter receive any increases such as the Staten Island Ferry received?

MR. LAWYER: Objection. I don't think that is pertinent.

THE COURT: Sustained. He can tell me what he received and what the Staten Island people received and I will make the determination of whether there was an increase.

MR. GROSSMAN: What Staten Island received are in the contracts which are now in evidence.

THE COURT: What did he receive?

Q What did you receive, sir?

A In March of 1972 I received a 5-1/2% increase.

In July of 1973 I again received 5-1/2%.

In April of 1974 I received a 5-1/2% increase and in May of 1974 I received a 6% increase.

Meanwhile the harbor had received 20, 10 and 10.

THE COURT: Wait. You don't testify as to that. They have introduced documents as to that.

Q Were there any other promises made to you people as deckhands?

A No, we are not promised anything.

Q Did you receive any communications from your superiors in the Coast Guard?

A No, I did not.

Q Was there any increase between 9/71 and 3/72?

A No.

Q None at all?

A No.

MR. GROSSMAN: No further questions.

CROSS-EXAMINATION

BY MR. LAWYER:

Q How much is your gross yearly pay?

A $11,000 a year.

Q What is your position?

A My position is a deckhand and I also am known as a wheelsman also. My position is up at the wheelhouse to assist the captain in other functions of the steeking of the vessel and navigation.

Q Do you get overtime?

A If I work on my sixth day I do get overtime. I work a 40-hour week.

MR. LAWYER: No further questions.

REDIRECT EXAMINATION

BY MR. GROSSMAN:

Q Are you familiar with deckhands on the Staten Island Ferry?

A I have a few friends there, yes.

Q Have you discussed your functions and duties and responsibilities with them?

A Yes, I have.

Q What are your functions and responsibilities?

THE COURT: Mr. Grossman, I can be an engineer and my job is to take care of the engines. There is an awful lot of difference between taking care of the engines on a Governors Island Ferryboat and the Queen Elizabeth, too. The job description is the same.

THE WITNESS: It is not.

THE COURT: The job description as submitted to

me by the briefs and your attorney are the same.

THE WITNESS: We are classified as deckhands but we have to work up in the wheelhouse as such.

THE COURT: When the engineer tells me his job is taking care of the engines, such is the job of the engineer of the QEII to take care of the engines, that does not help anything, does it?

MR. GROSSMAN: No, sir.

THE COURT: Next question.

Q Are you familiar with the functions and responsibilities of deckhands on the Staten Island Ferry?

A Yes, I am.

MR. LAWYER: Objection.

THE COURT: Sustained.

MR. GROSSMAN: No further questions.

MR. LAWYER: No more questions.

THE COURT: You may step down.

(Witness excused)

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THE COURT: Mr. Lawyer.

MR. LAWYER: I reserve my motions, your Honor.

Mr. Wesp, your Honor.

W I L L I A M H E N R Y W E S P, called as a witness by the defendants, being first duly sworn, testified as follows:

THE COURT: I want to point out to Mr. Grossman this Exhibit 5 which you foisted on me is a claim by you that you are entitled to parity of salary with Staten Island Ferry.

The figures you have in that chart are the same that Mr. DiMaggio says the Staten Island people are supposed to receive.

MR. GROSSMAN: The figures on this chart, your Honor, are not the claim of the complaint.

THE COURT: Then why give it to me?

MR. GROSSMAN: To compare what happened here throughout this period.

THE COURT: Read the heading.

MR. GROSSMAN: I know that.

THE COURT: Why give it to me? It is not what you are claiming. That figure you are asking for in damages is based on parity of salary with Staten Island,

not based on a differential in salary with parity of increase.

Take that back. I don't want to see it.

Mr. Lawyer, please continue.

DIRECT EXAMINATION

BY MR. LAWYER:

Q Mr. Wesp, you are retired?

A Yes, sir.

Q What did you do before you retired?

A My last job was with the Department of Transportation in the office of the Secretary and I was known as the Chief of the Personnel Policy Division.

Q When did you leave that position; that is, when did you retire?

A August of 1974.

Q Tell us briefly what you did in that job.

A From the beginning of the Department of Transportation or about the time I went there in 1967 I was responsible for salary and wage activities in the Department for Executive Recruiting and Appointing.

In the reorganization just shortly before I left I assumed some additional duties over and above the ones that we are interested in here that involved enlarging my division.

I assume that answers that adequately.

Q Prior to your position with the Department of Transportation, did you hold a comparable position with another agency?

THE COURT: When did you start with the Department of Transportation?

THE WITNESS: May or June of 1967; shortly after the Department was created.

THE COURT: All right.

Q Prior to that where did work?

A My job immediately before that was similar with NASA; for five years I was Chief of Classification and Pay there.

Q You have been in the courtroom since the trial began, is that correct?

A Yes.

Q You are generally familiar with the background of this particular lawsuit, sir, Whelan against the Coast Guard, et cetera?

A Yes, sir.

Q When you came in to the Department of Transportation, sir, what wage system was then in effect for the Governors Island Ferryboat employees? That is,what were the wages based on?

THE COURT: When the Department of Transportation

took over?

MR. LAWYER: Yes, sir, when he came in, which was almost simultaneous.

THE COURT: The Department of Transportation took over the Governors Island Ferry around May of 1967?

THE WITNESS: It would have to be April 1, sir, because that is when the Department was created and it was at that juncture that Coast Guard became a part of DOT.

MR. LAWYER: The confusion is caused by me. The legislation was passed in 1966.

THE WITNESS: October of 1966, yes.

Q In fact, no physical takeover occurred until the following year?

A Yes, April 1, 1967.

THE COURT: Let's go back.

Was the Coast Guard responsible for the operation of the Governors Island Ferry in 1964?

THE WITNESS: No, sir, that was the Army.

THE COURT: When was the Army responsible? Tell me when the period of Army responsibility ended.

THE WITNESS: Officially July 1, 1966.

THE COURT: Then the Coast Guard came in, right?

THE WITNESS: Yes.

THE COURT: Until April 1 of 1967?

Q:mg 5 Wesp - direct

THE WITNESS: From 7/1/66 it was Treasury Department.

THE COURT: The Coast Guard is under Treasury?

THE WITNESS: Until April 1, 1967, when it became the Department of Transportation.

THE COURT: And Coast Guard moved into the Department of Transportation?

THE WITNESS: Yes, sir, April 1, 1967.

THE COURT: All right. Now I am clear.

Go ahead,

Q Mr. Wesp, I am going to direct your attention, sir, to an earlier period.

After you came into the Department of Transportation, did you familiarize yourself, sir, with memoranda and data reflecting what were the wage rates for the Governors Island facility?

A Yes, I did; not immediately but in the ensuing months.

Q Prior to 1966 who if anyone were the Governors Island employees in parity with insofar as basic wage scales?

A The 69th Street Ferry. The wages for those employees, and I am referring to some personal notes, were established for years by the Army Air Force Wage Board.

Q:mg 6 Wesp - direct

This was the group that had the wage-setting authority for Army and Air Force and they followed a procedure of parroting the 69th Street labor contract so when the 69th Street Ferry negotiated a new contract, a copy of this was given to the Army Air Force Wage Board. They followed the terms of that contract.

This applied -- and the reason I make this point, something was said this morning that I don't think is quite correct -- the Army applied its last increase to those ferryboat employees in April of 1966 and it was made effective the 1st of September in 1965.

This was done in April 1966 shortly before the Army departed and what they did was to honor the final stage of a defunct labor contract because the 69th Street Ferry was then out of business.

THE COURT: You say in April of 1966 the Army increased the wages retroactive to --

THE WITNESS: The 1st of September in 1965.

THE COURT: Therefore, if I gather it, the employees of the Governors Island Ferry were paid according to the wage contract of the 69th Street Ferry to the date of its expiration, even though 69th Street had gone out of existence?

THE WITNESS: Yes, sir, that is correct.

THE COURT: And when would that contract expire?

THE WITNESS: You mean the 69th Street?

THE COURT: What would be the date of the expiration of that contract, yes.

THE WITNESS: Your Honor, I don't know but I would assume it became defunct the day the 69th Street Ferry went out of business.

THE COURT: But they had a contract in existence that had a termination date beyond that.

Do you know what the termination date of that contract was?

THE WITNESS: No, sir, I do not.

THE COURT: Does anybody know?

MR. LAWYER: I can ask another question to bring out the same point.

THE COURT: Go ahead.

BY MR. LAWYER:

Q At what time were the Governors Island employees no longer paid in accordance with the 69th Street Ferry contract as projected?

A When they became Treasury Department employees or Coast Guard employees and this is the Treasury Board decision we have been talking about. It became effective on the 3rd of July, 1966.

Q:mg 8 Wesp- direct 1(:9)

THE COURT: At that period of time the Coast Guard took over the operation of the Governors Island Ferry?

THE WITNESS: Yes, sir, and if I recall the history correctly,it should be noted somewhere and I think it is in the record,the Coast Guard actually assumed operating the ferry one month, that is June 1st.

THE COURT: That does not make any difference.

THE WITNESS: July 1 is the effective date.

THE COURT: When they came in, were the employees of the Governors Island Ferry receiving the salary provided in the now defunct contract between 69th Street Ferry and the union?

THE WITNESS: Yes, sir.

THE COURT: As I gather it that contract by its terms would have expired around July 1st, 1966?

MR. LAWYER: That is my understanding, yes, sir.

THE COURT: The question is how do you fix the salary of these plaintiffs subsequent to July 1st, 1966?

MR. LAWYER: That is correct.

Q Mr. Wesp,did you check various records within the Department of Transportation during the period that this lawsuit has been in existence to make such determinations as his Honor just referred to; that is, how wages were fixed after the 1966 date?

A Yes, I did more than that because I had to go out of the Department todo this. I consulted with people at the Army Air Force Wage Board to construct the history or get from them their history.

I also got the information from the Treasury Board, a copy of their Treasury Board decision and so forth.

This Treasury Board we keep talking about, it should be noted, is the Treasury Department Wage Board. It is the agency that has the authority to set wages where they are administratively set for employees of the Treasury Department.

Now the Treasury Board fixed the new schedule for these employees in July of 1966.

THE COURT: Do we have any document that sets that out?

MR. LAWYER: He himself has made notes, taking many documents,and reconstructed the history as to what has happened since that time, and he is prepared to testify about it.

THE COURT: All right.

Q Mr. Wesp, would you give us the history of the pay increases and the respective dates since 1966 for the employees?

A I am working from personal notes here. I do not

have access to my files back at the office any longer although Mr. Lawyer's office has been given a complete brief and I am sure that everything is a matter of record and copies can be --

MR. GROSSMAN: I object. That is not satisfactory that he is sure it is a matter of record.

THE COURT: He is the one who looked at the record. I let your witnesses testify that way.

Why are you objecting to the Government's witnesses testifying that way?

MR. GROSSMAN: I am objecting to the statement that he looked at something but he has nothing here to back it up.

THE COURT: So did your people testify to that.

MR. GROSSMAN: They were the actual employees who received the salaries.

THE COURT: If he misstates what the record was your clients have their pay slips to show.

Go ahead.

A On the 1st of July in 1966 the Treasury Board issued effective the 3rd of July an increased wage schedule for the ferryboat employees.

It provided a ten-cent-an-hour increase for the unrated personnel or the unlicensed personnel, a fifteen-

Q:mg 11 Wesp-direct 1003

cent increase for licensed personnel.

There has been much discussion this morning. There were two adjustments given by the Coast Guard retroactive to August 25th of 1968.

THE COURT: Don't go to 1968. I am still in 1966. What was the next increase?

THE WITNESS: The 1968 increase.

THE COURT: Starting roughly July 1st of 1966 the unlicensed personnel were increased ten cents an hour and the licensed personnel were increased fifteen cents an hour?

THE WITNESS: Yes, sir.

THE COURT: When was the next action taken by anyone regarding these plaintiffs' salaries?

THE WITNESS: In the form of wage schedules which conveyed increases in salary rates to these employees --

THE COURT: When?

THE WITNESS: The first is February 14, 1969 which is retroactive to the 25th of August 1968.

THE COURT: How much?

THE WITNESS: I don't have it worked that way. I can lump it when I get the second part of it out, your Honor.

In October of 1969 the second step of this adjustment was given retroactive to the 25th of August 1968.

Q:mg 12 Wesp-direct

THE COURT: We don't have to go into that.

I gather the plaintiffs don't dispute the fact that for that period they received the proper increase.

MR. LAWYER: I don't know if they dispute it or not. We may dispute some of the dates they put in and the amounts.

Apparently they are not disputing that they received the proper increase but I am not sure what they consider the proper increase to be.

THE COURT: I thought you, Mr. Grossman, conceded through the witness Captain Whelan that the retroactive increase at August 28, 1968 created the parity of increase for that period of time.

MR. LAWYER: With the Staten Island Ferry. My only qualification is that we are not conceding that it was the intent. If it happened it happened incidentally.

THE COURT: I am talking about the amount given. Is that right?

MR. GROSSMAN: That is correct, your Honor.

THE COURT: Now you want to give me the total.

THE WITNESS: The deckhand salary was increased 82 cents an hour which was a 21% increase.

THE COURT: That is the unlicensed.

THE WITNESS: The oiler was increased 94 cents an

Q:mg 13 Wesp-direct

hour. That was a 23% increase.

The engineer was increased $1.22 an hour, a 24.8 increase, but you can call it 25.

The master's salary was increased $1.27 an hour or 24.9%.

THE COURT: That takes us through October 1969.

THE WITNESS: Yes, sir.

Q When was the next adjustment made, sir?

The next adjustment that we gave was effective on February 29, 1972. This is the first of the 5.5% increases and first let me mention the increase was 25 cents to the deckhand; 26 cents to the oiler; 34 cents to the engineer; and 35 cents to the master.

I would like to point out that we gave this increase at this juncture.

As we have mentioned, the final adjustment of that 25% phase, I will call it, occurred in October 1969. Many things were going on in the ensuing year, including the fact on the 15th of August 1971 all federal agencies were frozen. They were precluded from conducting surveys or increasing wage schedules.

We did not get released from this restriction until the 11th of January 1972 and it was at this point in time that the Civil Service Commission prescribed the 5.5%

limitation on wage increases and following this the earliest date we were able to work something out;on February 29, 1972 we gave a 5.5% increase to these employees.

That raised the deckhand 25 cents an hour --

THE COURT: You have given us that.

THE WITNESS: For 1972?

THE COURT: Right.

26 to the oiler, 34 to the engineer and 35 to the master.

THE WITNESS: That is correct, in 1972.

In 1973, July 8, 1973, following a wage survey we were restricted again to 5.5 so we gave 36 cents to the deckhand, 27 cents to the oiler --

THE COURT: You say restricted. Restricted by the Civil Service?

THE WITNESS: Yes, sir, 5.5.

THE COURT: Which meant the deckhand got what?

THE WITNESS: 36 cents, 27 for the oiler.

THE COURT: Engineer?

THE WITNESS: 35 cents.

THE COURT: Master?

THE WITNESS: 37 cents.

THE COURT: Thank you.

THE WITNESS: These are all hourly increases.

The next adjustment we gave was effective on April 1, 1974.

We were still limited or restricted to a 5.5 increase formula per year.

We gave a 5.5, that resulted in 28 cents for the deckhand, 29 cents for the oiler, 38 cents for the engineer, and 39 cents for the master.

And six weeks later,on May 12, 1974, the date the 5% control was taken off federal agencies and federal employees, we gave these employees a new wage schedule.

This meant the total 1974 increase was an average 12% increase.

THE COURT: You can't do that. You have to give me cents.

THE WITNESS: On May 12 the deckhands pick up 33 cents, the oiler got another 33 cents, the engineer got another 44 cents, the master got another 43 cents.

The point that I simply wanted to leave is that once we were relieved of that 5.5 control we were then in a position to adjust these rates towhat we thought was proper based on our last wage survey and we then were able to put this in place.

THE COURT: As I gather your testimony, can you tell me what a deckhand was receiving per hour on May 12,

1974 or May 20, 1974, when you made that final increase which you now say is the proper salary to have been paid pursuant to the survey?

THE WITNESS: The deckhand hourly rate on the current schedule is $5.68.

The oiler current salary is $5.85.

The engineer currently is $7.64.

Again, these are hourly rates.

The master currently is $7.92 cents an hour.

THE COURT: All right.

Q Mr. Wesp, at what time, if any, from 1964 to date, based upon your experience and familiarity with the records pertaining to the Governors Island Ferry employees, were their base wages put on a parity basis with the Staten Island Ferry?

A I have difficulty with parity. If we are using the word the same you mean when were their rates based on or made like Staten Island Ferry?

Q Equality of basic pay, yes.

A With that understanding, so far as I know --

THE COURT: Reframe that question.

MR. LAWYER: I am simply asking --

THE COURT: Start over again.

Q When if ever at any time, to your knowledge, were

the base rate of wages for the Governors Island Ferry employees set in parity with the base wages of the Staten Island --

A The same as.

THE COURT: The witness would like you to use the words "the same as."

I have been using the word parity in the sense of the same as.

Q I mean the same as.

A The answer I have to give is that from my knowledge prior to my coming into this, my knowledge since I have been dealing with it, no one with wage-setting authority ever intended or in fact did equate Governors Island Ferry rates with Staten Island Ferry rates for the same raise and this is not done today.

Q In 1968, sir, you have heard testimony that a survey was taken with regard to the increases that became effective for that year, in August 1968, that is.

A Yes.

Q Are you familiar with how that survey was conducted?

A No, I was on the periphery of that. It was done by other people and they experienced a lot of, I will say, difficulty, as I understand it; understanding what was

going on with Staten Island Ferry, that is.

As I understand it, an attempt was made to again do as the Treasury Department had done earlier. For some reason or other they could not work this out. It was at this point the first survey was attempted in the New York Harbor.

Q Did you subsequently yourself participate in any surveys at any time with regard to the Governors Island Ferry employees' wages?

A Yes.

THE COURT: Before you answer that, do I understand there was a survey made in 1968 in New York Harbor?

MR.LAWYER: Yes, sir, which he said he himself did not participate in.

THE COURT: A survey was made?

THE WITNESS: Yes, sir.

THE COURT: Do we have any documents showing the result of that survey insofar as it bears upon the rate of pay that should be paid to the plaintiffs?

MR. LAWYER: There are documents included in the documents we have but it will take some moments to pull it out.

THE COURT: You can do that in your brief if you want.

Q:mg 19 Wesp-direct 111

Q What was the first wage survey for these employees, sir, that you participated in?

A I came up and directed the one starting in 1972. I did the one in 1973, that is, came up and started it. I came up here and I started the one in 1974.

Q With regard to the very first one you participated in, tell us the year, that is, the time period over which it extended and what was done.

A I am a little rusty on the precise time frame. It was, I believe, in the spring. By that I mean March-April of 1972.

Going back to January when we knew that the freeze was going off, some adjustment in the absolute freeze was coming our way. I contacted the Coast Guard and asked them to find out as soon as possible what they could get for us as to current wages in the harbor so that when we were in a position, we knew what we might be able to do.

We gathered enough information to consider in February of 1972 that we could go ahead and give the 5.5 increase. In other words, we knew that by formalizing our informal survey as of that date we were going to get sufficient information to support that action and more.

This came to pass. How we did it -- in all of these surveys there is, when you get down to the level o

where the survey is going to be done, there is what I would term a kick-off meeting where all interested parties are brought into it. At that meeting Local 333, the representative of the Ferryboat employees, are invited to participate. They do and they bring representatives.

In those initial meetings we go over the list of firms that we are going to contact. We may make adjustments. We have in the past. In fact, over the succeeding years we have tailored and streamlined the survey quite a bit.

We now only include descriptions of the four jobs or ratings that are used on the Governors Island Ferry.

Early on we used a lot more information but found that it contributed no useful purpose.

As I say, the Local 333 people have their turn at bat. They can contribute, comment, make suggestions. They often have -- their suggestions have often been helpful. They do have a representative participate with our Coast Guard people in the data collection process. As far as I know they probably have copies of the data or the work sheets that are put together during the survey.

Eventually that information is accumulated and assembled and brought to my office, my former office, at which point we try to analyze it statistically, which is a great way of saying simply we try to work out averages for each of

the ratings. We try to understand the information we have collected. We throw some of it out if it is questionable. We try to consider certain fringe benefit information if it has dollar and cents value that is readily ascertainable.

We throw it together, average it out and come up with a rate for each of the four ratings.

This translates to your rate schedule.

Q Were there any surveys subsequent to the one you have just testified about?

A What I have just said applies to the 1972, 1973 and 1974 surveys.

As far as I know, unless DOT is going to do differently what I have said is essentially what will happen in 1975.

MR. LAWYER: Your Honor, I am going to refer to page 2 of Plaintiff's Exhibit 1 which is the administrative file of the Civil Service.

Q Mr. Wesp, I show you a copy of a letter dated October 24, 1973. It is addressed to Mr. William A. Wesp.

You are that person, correct?

A Yes.

Q I show you on page 2, the very top of the page, a paragraph that reads "Again, we cannot view the third condition. A comparable increase is essential to the

continued operation of the Government service concerned as being met. No additional information has been presented to support this condition. In fact, out of a total of 12 employee operations in calendar year 1972 no vacancies remain to be filled at the present time."

Do you know what was the foundation for that information in that letter, that is, where did that information come from?

A Yes, this relates -- it happened both years when we applied as the Civil Service Commission to giving us an exception to the 5.5 control so that we could give a greater increase to the Coast Guard Ferryboat employees.

On this essential service issue, which is one of the three cirteria the Commission looks at, I don't know what all they consider. I would seriously doubt that they would take it upon themselves to tell any federal agency that their activity in such and such a place is not essential. But the one specific thing that both asked for were turnover statistics and an indication of vacancies at the present time and if you have vacancies, what are you doing to fill them.

It happens that our Governors Island activity was no help to [illegible] in this regard. That is what is being discussed in here. The turnover that we have in that work

force is small. Apparently the jobs do not go vacant very long and at that point in time they had no vacancies.

MR. LAWYER: Your Honor, I have no further questions of this witness.

I do want to put in some exhibits. However, I think they may be mere duplications because of the administrative record and what Mr.Grossman would have put in.

I would like to reserve until after his cross-examination to put in exhibits.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. GROSSMAN:

Q Mr. Wesp, when for the first time did you learn about the Treasury Department Wage order?

THE COURT: When you say Treasury Department Wage order, what exhibit are you referring to?

MR. GROSSMAN: Exhibit 2, your Honor.

THE COURT: You ought to use that.

MR. GROSSMAN: It is labeled Treasury Department Wage Board Decision.

THE COURT: All right.

A I cannot say precisely. It would have been certainly some time in 1967. There are two reasons why I am sure of that. We had another project going on in the

office which was to inventory everything of a Wage Board pay nature that the new department had acquired.

If you have any appreciation at all for the Department it picked up a lot of stuff from a lot of places in the Government and created some more stuff. We had a basic housekeeping problem of just finding out what is there, so in retrospect, this means to me it had to be some time in 1967.

Q Were you in the position at that time of making a determination as to whether this Wage Board decision would be adhered to by the Department of Transportation?

A In 1967, no, because things had not been stilled sufficiently so that the Secretary's authority was delegated on down into the hierarchy and the fixed point established.

I would say this: There is no obligation on the Secretary of Transportation to do what the Secretary of the Treasury did.

Q Well, if there is nothing--

THE COURT: What I really want to find out here is you have here a Treasury Department Wage Board decision.

THE WITNESS: Yes, sir.

THE COURT: Did youconsider that binding upon you when the responsibility for the operation of the Staten

Island Ferry went from the Treasury Department to DOT?

THE WITNESS: The answer has to be yes, because we were paying the pay rates that resulted from this Treasury Board decision.

THE COURT: All right.

Q Can you tell me whether you know whether any determination was made at any point subsequent to July 1967 as to whether or not this Treasury Department Wage Board decision would be continued to be adhered to?

A No, I don't believe I can answer your question the way you want it answered because problems that came up as the Coast Guard tried to carry that out when they came into DOT surfaced, problems that they were not able to satisfactorily resolve and from that, they moved to the wage survey.

THE COURT: DOT takes over the Coast Guard. The Coast Guard is now part of your operation?

THE WITNESS: Yes, sir.

THE COURT: They are paying a wage scale based on the March 31, 1966 Treasury Department Wage Board decis... and that decision is to adopt what the Army was paying, right?

THE WITNESS: No, sir. That is where they adopted the Staten Island increases.

Q:mg 26 Wesp-cross

THE COURT: Therefore the proposal to (1) adopt the Army's current basic rates for ferryboat employees and add to them the July 1st, 1965 increases to Staten Island ferry employees?

THE WITNESS: Right.

THE COURT: And (2) adjust these basic rates in the future by the cents per hour.

This is a determination of the Treasury Department?

THE WITNESS: Right.

THE COURT: Are you telling me that DOT had the right in the future to change this if it wanted to?

THE WITNESS: Yes, sir, I believe so.

THE COURT: Isn't that the issue in this case, Mr. Lawyer?

MR. LAWYER: That is one of the issues. At least that is the way I take it. DOT had the right to change it.

THE WITNESS: The Secretary had the right to make a new decision as to how he wanted to proceed.

THE COURT: To clarify this, let's assume that the Coast Guard was not transferred to DOT but remained in the Treasury Department; could the Treasury Department, in your opinion, have the right to subsequently change this determination?

THE WITNESS: Your Honor, you have stuck a word in

there "subsequently change"; yes, sir, I think if they felt --

THE COURT: Any time they wanted. Even though they said: Okay, from now on we are going to give you the same per hourly rate that Staten Island gets, and two years later they say: Well, we are not going to give you that much anymore, and enter a new order which said: No, we are only going to give you 50% of what they get --

THE WITNESS: Yes, your Honor, that could be done. I built certain assumptions in here. There has to be a logic or rationale. I don't think you would willy-nilly change your mind.

THE COURT: I assume they did something.

THE WINTESS: I would assume there would be some reason, some thing.

THE COURT: I think we are at the nub of this, Mr. Grossman.

Is it your contention they don't have the right to change this?

MR. GROSSMAN: No, your Honor. I am trying to probe the witness to find out if there ever was a decision to change it by the Transportation Department, when that decision took place, what notice or pronouncement was made concerning the change and then, your Honor, I say to you

that in Exhibits 3 and 4, dated in June of 1969, the Department of Transportation, United States Coast Guard, advised two Congressmen that there had been no change as of that date.

I was just about to ask --

THE COURT: You are giving me a long dissertation but I asked a simple question.

MR. GROSSMAN: I say no, they probably have the right based upon some kind of justifiable reason.

THE COURT: Okay.

Now you can go ahead.

Q Mr. Wesp, do you know whether you participated or whether you did not participate, whether any other people in the personnel department who had responsibility for this at any time came to the conclusion that: We are not going to follow this Treasury Department Wage Board decision?

A Yes. I would say yes. Obviously a conscious decision was made. I would say that it occurred during and after the couple of adjustments that led to the August 23, 1968 adjustment.

Q Mr. Wesp, you are saying you would say. Do you know or are you guessing?

A No, I am not guessing.

Q Do you know as a fact when a decision was made?

A Yes.

Q Who made it? Is there any document showing that such a decision was made --

THE COURT: You are asking seven questions in one. Ask one at a time.

Q Do you know when such a decision was made?

A Yes, a conscious decision had to be made-- I cannot tell you the exact date.

MR. GROSSMAN: I object.

THE COURT: He is in the middle of a sentence. Let him finish.

A Well, it would have occurred-- it would have to be after October 27,1969 which was the second step of the retroactive adjustment to August 1968.

Q You are not telling me whether a decision was made. You are saying it would have to be made --

THE COURT: Then why don't you ask him the question?

Q When was a decision made? Do you know?

A The precise date, no, sir.

THE COURT: What date do you think it was, and was there an order entered to that effect reflecting the decision?

THE WITNESS: Yes, sir, there is in the record a

Q:mg 30 Wesp - cross

letter that sent instructions to Coast Guard for Governors Island--

Q Would you produce that letter --

THE COURT: Let him finish. He is in the middle of a sentence.

THE WITNESS: I think it is perhaps already in the record and if not, it can be produced.

I do not know and cannot recall the precise date of it.

THE COURT: All right, Mr. Lawyer.

Do you have it?

MR. LAWYER: Your Honor, maybe after this witness is finished we can pick it out. There are so many letters. I don't know precisely which one.

MR. GROSSMAN: So many letters in what, the Civil Service file?

THE COURT: Why are you arguing with him, Mr. Grossman? I asked him a question. What do you butt in for?

MR. LAWYER: As soon as this witness gets down we will produce it.

THE COURT: He says there is a record reflecting the change of Exhibit 2.

Q I show you Exhibits 3 and 4, Mr. Wesp, and I ask you to read the second paragraphs in each.

Q:mg 31 Wesp-cross

A All right, sir, I have seen them.

Q Did you know about that policy being adopted, re-adopted, on 28 August 1968 as stated there?

A I think this is a semantic problem from the time of the deposition. The answer to your question would be no. I think what is being done in this one case--

THE COURT: You say this one case. What document are you referring to?

THE WITNESS: I am referring to Exhibit 3. This is just gut reaction. My feeling is that what the Admiral was trying to do was to dispose of an inquiry. We finally got all this adjustment taken care of retroactive to 28 August and there it is. It is all wrapped up.

I responded during your deposition with respect to policy. Some policy people can make. Some policy people carry out. I think that would be what we would have to deliberate here.

Q I am reading from your deposition on page 12.

A Let me say I am surprised by the letters.

Q Is that your position today?

A Essentially yes.

Q You didn't know about that?

THE COURT: Didn't know about the letter written by the Admiral in Exhibit 3?

MR. GROSSMAN: I am talking about the second paragraph specifically which says that the Coast Guard will pay a percent increase per hour similar to the Staten Island Ferry as of 3 July 1966 and was adopted again on 28 August 1968.

THE WITNESS: It says "adjust its rates by the same cents per hour increase."

Q But you said you were surprised by those letters. You didn't know when I first showed them to you. You had never seen them, is that correct?

MR. LAWYER: This is confusing.

THE WITNESS: My position is the same. I was not consulted when these letters were prepared.

Q Would you look at the top of both letters on the right-hand side?

A Yes.

Q Aren't there symbols PC2 and 5730 on both of those letters?

A Yes, sir.

Q Tell me what those symbols represent.

A It stands for civilian personnel U. S. Coast Guard Headquarters.

Q What is 5730?

A I don't know.

Q Isn't that your office?

A No, sir.

Q You are certain of that?

A I am quite certain.

Q You have never seen those letters?

A No, sir. I am sure of that.

Q You were in the Personnel Department, weren't you?

MR. LAWYER: I didn't get the last answer, "You have never seen those letters"?

THE COURT: The witness said no, he never saw the letters.

MR. LAWYER: What letters, the symbols or letters?

THE WITNESS: The contents of the letters in Exhibits 2 and 3. I never saw them.

MR. LAWYER: He saw them at the deposition.

THE WITNESS: If I had been consulted I think in all fairness, Mr. Grossman, I would have made some suggestions that I would have considered helpful in these letters.

Q Are you telling his Honor now,today,right now, that those letters were incorrect?

A I would tell his Honor or anyone else that I have trouble with this phrase,"The Coast Guard adopted a policy."

The reason I have difficulty with this, I indicated in responding to your deposition, I do not think the man

Q:mg 34 Wesp-cross

had this authority. I think the man carried out a policy. I think the matter is overstated and I think that it gives the wrong impression.

I personally do not like it but I am not the originator of it.

THE COURT: But the Coast Guard did adopt that policy in the sense that it was contained in Exhibit 1 or Exhibit 2, wasn't it?

THE WITNESS: Yes, they put it into effect.

THE COURT: So therefore that is a policy.

THE WITNESS: Yes, sir, but this reiterates that we adopted a policy and this is in 1968.

THE COURT: You say you did not do it then?

THE WITNESS: No, sir, I don't think they did.

THE COURT: You. Weren't you there in 1968?

THE WITNESS: I was not here with this letter.

THE COURT: But you were in charge of this question of the rates to be paid by the Governors Island people.

THE WITNESS: I was in charge of that program.

THE COURT: Somebody wrote that letter to satisfy the Congressman's inquiry?

THE WITNESS: That is correct. It was done in Coast Guard.

THE COURT: Done where?

THE WITNESS: In Coast Guard.

THE COURT: It was a Coast Guard letter?

THE WITNESS: Yes.

THE COURT: What good is a Coast Guard letter -- Coast Guard was under DOT in 1969.

THE WITNESS: Yes, sir.

THE COURT: So it is you -- not you personally -- but DOT.

THE WITNESS: That is correct.

MR. GROSSMAN: It has Department of Transportation on the letterhead.

THE WITNESS: The man is right.

THE COURT: You are saying that letter did not directly reflect the policy in 1969 of DOT?

THE WITNESS: May I make a try at it?

I think this letter conveys the wrong impression to the recipient as to what policy was being carried out at that point in time.

THE COURT: So the only thing that is open is finding this order changing the Treasury Wage rule.

MR. LAWYER: Assuming such an order exists.

THE COURT: Then how did they change the policy? All this witness says is: I assume it must have been done. That does not help me one iota, Mr. Lawyer.

Q:mg 36 Wesp-cross

MR. LAWYER: I understand.

Put yourself in my position. The witness told you he can only assume.

THE COURT: You mean to change a wage policy-

MR. LAWYER: The Treasury Department Wage Policy. Now we have a brand new agency, Transportation Agency.

THE COURT: I want to know. It has been agreed that the Department of Transportation had the right to amend the wage policy as embodied in Exhibit 2.

MR.LAWYER: Yes, sir.

THE COURT: The witness says they must have changed it and I say if they must have changed it, it must be embodied in some piece of paper

MR. LAWYER: I understand.

THE COURT: Where is the piece of paper because that piece of paper, if it exists, shows the change in policy.

It will buttress what the witness is saying that the letter from the Admiral did not know what he was talking about.

MR. LAWYER: I understand.

THE COURT: We will have a short recess and search for it.

MR. LAWYER: I don't know if it exists.

THE COURT: Then how do we know the policy is being changed?

MR. LAWYER: It is evident it's changed. The question is how was it recorded.

THE COURT: You wrote letters saying it was not changed.

MR. LAWYER: I think we better have the recess.

THE COURT: I think we better, too.

(Recess)

THE COURT: Do you have any more witnesses, Mr. Grossman?

MR. GROSSMAN: No, sir.

There may be one or more short rebuttal witness.

THE COURT: We may as well put this off until tomorrow morning if he is looking through papers.

MR. GROSSMAN: He has voluminous papers to look through.

MR. BARTH: You think it would be possible to finish the cross-examination of this witness without this document?

I believe the witness is from out of town and it would be an inconvenience to continue tomorrow.

THE COURT: He is down with Lawyer looking for the document.

As I understand it now, we are up to the point where two letters are written to Congressmen prior to October 1969, right? stating that the policy is that they will give to the employees the same hourly increases that Staten Island got and then comes October 1969 when you grant the second half of the retroactive pay increase to embrace the increase in the hourly rate that Staten Island had.

THE WITNESS: Yes, the Coast Guard --

THE COURT: You, the Government.

THE WITNESS: Yes.

THE COURT: We are at that point when you say that the policy was changed and you would not continue in the future to give the same hourly increase to the Governors Island people that the Staten Island employees received.

THE WITNESS: In just those words, yes, sir, that is correct.

THE COURT: The next question is why and on what basis did you reach that decision?

THE WITNESS: Two or three reasons: (1) during that series of retroactive adjustments for some reason that I cannot fully explain, since I did not do it, the people at Governors Island professed a great deal of difficulty --

THE COURT: When you say the people of Governors

Island, I don't know who you are talking about.

Who are the people at Governors Island?

THE WITNESS: I am sorry; the individuals there who were doing the legwork. That would be in your civilian personnel office at Governors Island who were attempting to get information out of Staten Island Ferry, as I understand this, were having considerable difficulty understanding exactly what kind of an adjustment was going into effect with the Staten Island Ferry.

I honestly do not know what all of this difficulty was that they were experiencing.

We had a gentleman earlier here today who explained to us how the contract at Staten Island was interpreted; what it said and what it meant.

This was some of the kind of difficulty our people professed to be having. They came to us, the Coast Guard, at that point in time. They had an idea that they would like to do an informal wage survey in the New York Port and our question was: Is such a thing possible? And they said yes, they thought that they could do it.

But since they did not feel that they could continue with this cents per hour increase formula; in other words, it was not the nice patsy it was outlined to be, they wanted to look around and see what else they could find in

Q:mg 40 Wesp-cross

the area.

We in my offi[illegible]old them we had no objection to their trying this on an informal basis.

They did, and it was really from this start that we in the Department, I should say in OST, when we finally took charge of these surveys, it was at this juncture that we decided yes, in fact it was possible to survey in the New York Port and yes, there were things there that we should know about in addition to Staten Island Ferry and this basically is why we started to survey.

We had not found the papers, but we were getting close when we got the call to come up.

All of this occurred subsequent to the adjustments given in 1969.

THE COURT: I understand that.

Did you conduct the survey?

THE WITNESS: Yes, sir, starting in 1972.

THE COURT: It took you from October of 1969 to the spring of 1972 to make up your mind to conduct a survey and during that period you did not pay the hourly increases that the Staten Island people received, is that right?

THE WITNESS: Yes, sir.

I point out, I think I mentioned earlier, starting in August of 1971, the federal sector was placed under a

total freeze. You could not survey wages. You could not adjust schedules for federal employees.

THE COURT: When was that?

THE WITNESS: August 15, 1971.

THE COURT: What happened between October 1969 and August 1971, a period of nearly two years?

THE WITNESS: Nothing in the way of survey or wage adjustment activity.

THE COURT: None at all?

THE WITNESS: No, sir.

I think I am repeating myself now --

THE COURT: And you don't know the reason for it? You understand what the issue is before this Court and that was that there was an existing order which had not been repealed by you to which you have not lived up.

THE WITNESS: I understand what you are saying, your Honor.

THE COURT: And you are telling me yes, you did not live up to it.

MR. LAWYER: I don't think he is telling you that

THE COURT: I asked him why not, and he can't tell me.

MR. LAWYER: I must point out in 1969 they got the retroactive wages.

THE COURT: But they were still behind the 8-ball. Up to 1969--

MR. LAWYER: Then the freeze comes up.

THE COURT: A year and a half later.

MR. LAWYER: But they were given adjustment wage increases.

THE COURT: They were not given wage increases for a year and a half in between.

MR. LAWYER: There is nothing saying they should receive it.

THE COURT: There is an outstanding Treasury Department Order which these people did not revoke.

MR. LAWYER: All of a sudden it was the Department of Transportation.

THE COURT: I asked him whether it would be binding and he said yes.

MR. LAWYER: That is a question of law. The statute books themselves say that the head of the agency in which the Coast Guard is placed shall fix the wages for crews of vessels.

The Secretary of Transportation fixes wage levels for the people on this ferry. They cannot be bound as a matter of law by a policy that was articulated by another department and even if they were, they could change it.

THE COURT: Of course they could but there is no indication they did. They did nothing.

MR. LAWYER: There is indication by the fact that in 1968 the raises that were retroactive to August 25, 1968 were based on a survey which the plaintiffs have conceded. That in itself was the change. It was not geared to the Staten Island Ferry increases.

I am saying we know it's changed. The question is how was it set forth in writing, if at all.

I am saying it was changed.

THE COURT: I thought the changes that were made were geared to the Staten Island Ferry.

MR. LAWYER: No, sir. That is what one of the letters says, which this witness, as I understand him to say, is incorrect with regard to that year 1968, but accurate with regard to the year 1966.

In other words, he is saying the Coast Guard Commandant did not know what he was talking about.

THE COURT: That is not what I understand him to say but we will find out.

When you granted the retroactive pay increases in 1969, did they not add up to what the Staten Island increases were for the same period?

THE WITNESS: Approximately, yes. They professed

that their adjustment represented a picture of what was due based on the information they got out of their survey. They showed this to us and what they were proposing to do was not unreasonable and at thispoint, if I may, your Honor, I would like to inject something about wage surveys.

If, as we hear, we have heard today and we hear on other occasions, everybody in the pot gives a 10% increase and if this is actually applied, your result on the survey is going to come out pretty much the same kind of 10% increase.

This is what I think happened in 1969.

THE COURT: In other words, you are telling me that the survey that was conducted in 1968 resulted in the retroactive increases paid in 1969?

THE WITNESS: Back to 1968, yes, sir.

THE COURT: And that they were not tied to the increases granted Staten Island employees by their contracts with the employer?

THE WITNESS: That, sir, is correct. That is exactly what I understand. The adjustment that was made was based on the result of their survey effort.

Q Mr. Wesp, how long did this survey take that you are talking about right now?

A I can only approximate that, Mr. Grossman, since

I did not do it. I have the impression it took them several months.

MR. GROSSMAN: I ask the Government to produce a record, a report, a document, showing the results of that survey.

MR. LAWYER: I think I have already been asked to produce it and I can only say when he put in his notice to produce it referred to something related to the Staten Island Ferry.

Now in court today I have heard the whole theory of the case changed and all of a sudden I am being asked to produce things to conform to it to help the case in which we are the defendants.

I will produce it. I don't have them right now. If I have then, I will produce them.

THE COURT: All right.

Q Mr. Wesp, have you got the results of the latest survey in 1972?

THE COURT: That was not the latest one. He said there was one in 1972, one in 1973 and one in 1974.

MR. GROSSMAN: I ask the Government produce a report, a record, a reduction in writing, of any results of those surveys.

MR. LAWYER: What surveys?

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THE COURT: The findings of 1972, 1973 and 1974.

MR. GROSSMAN: All of the surveys allegedly made as Mr. Wesp testified.

Q Wasn't that an unusually long time that this first survey was delayed?

A No question.

Q What do you attribute that to?

A What do I attribute it to? Inexperience, trial and error, the fact it had not been done before, any one of a great number of things.

Bear in mind I did not do that survey.

Q Even with that survey and with the action subsequently taken retroactively, there was still a 14-month peiod, sir, from July 1967 to August 1968 where these plaintiffs received absolutely no increase whatsoever, is that correct?

A I believe that is correct, yes.

Q May I ask you this, sir: Assuming that there is no document rejecting the policy or directing the institution of a new policy as distinguished from the Treasury Department Wage decision, is it not true that if the policy had been adhered to, which was undertaken by the Treasury Department and subsequently acknowledged in Exhibits 3 and 4 to the Congressmen, that there never would

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have been a necessity in 1972 or 1973 of asking the Civil Service Commission for an exemption over and above the 5.5 guideline?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q Mr. Wesp, are you familiar with a letter dated May 1, 1972, from the Assistant Secretary for Administration to Mr. Joseph O'Hare?

I am talking about Exhibit 6, your Honor.

A May I see that?

THE COURT: Exhibit 6, a letter from the Coast Guard to Congressman Bingham.

MR. GROSSMAN: That is not the one. It is the Hafflinger letter.

THE COURT: What exhibit are you talking about?

MR. GROSSMAN: I am afraid I omitted to offer it. I now offer it.

I was going to offer it and then I discovered that it is part of Exhibit 1. It is page 23 of Exhibit 1, your Honor.

THE COURT: Okay.

Q Have you seen that letter before?

A Yes.

Q May I ask you something specific? I ask you to

read the first full paragraph on page 2 beginning with the word "Basically."

A "Basically two techniques are available to federal departments when fixing wage rates administratively for marine employees (assuming the rates are not established by law): First when it can be determined that an identical or virtually identical activity is being operated by private industry in the same area it is possible to adopt or parallel those industry rates for payment to federal employees.

"If, on the other hand, there is no exactly parallel situation or if there exists a number of employers who can be considered representative of the same occupation or industry in the area then it is customary to conduct surveys of wages paid in that industry.

"Such information then provides a basis for establishing pay rates or pay rate schedules for the federal employees affected."

THE COURT: What is your question?

Q Mr. Wesp, from the point of time when you were put in charge or had something to do with determining wage rates and increases for the plaintiffs in this case, did you follow those two techniques?

A We followed the latter which is what we told

Mr. O'Hare; that is, the survey.

Q Could you tell his Honor why you did not follow the first one?

A Because we don't think the first parallel exists.

Q In other words, you don't think there is a parallel with the Staten Island Ferry?

A No, sir.

Q Will you tell us why?

A Yes, to the extent that I can.

We have already covered that today in some of your own testimony very nicely. It seems to me you have pointed out several differences between the employment situation with Staten Island Ferry and Governors Island Ferry.

As I get the history of this thing from the Army they thought the 69th Street Ferry made a pretty reasonable match. For this reason they were content to adopt it. The fact of the matter would have been that had the Army continued to operate this base and the ferries they would have been hard-pressed to find an alternative way of setting wages for those people.

Q Isn't it possible, sir, that they would have considered the Staten Island Ferry comparable or identical?

THE COURT: He just said no.

MR. GROSSMAN: He said on the Department of Transportation.

THE COURT: He said the Army.

THE WITNESS: The Army considered 69th Street --

THE COURT: But not Staten Island.

Q How do you know, sir, that after the 69th Street Ferry went out of business that the Army might not have found the Staten Island Ferry --

THE COURT: You are getting into a speculative area.

A I don't know.

MR. GROSSMAN: He is speculating, your Honor. He says the Army would not have.

THE COURT: Look, Mr Grossman, Captain Whelan took the stand and said when the Hart Island Ferry came in, he said he could put his hand out and lift it up.

Don't you think the captain of the Staten Island Ferry, which is at least two and a half times the size of a Governors Island Ferry would know when he saw a Governors Island Ferry, he could pick it up in his hand and lift it up?

MR. GROSSMAN: May I recall to you--

THE COURT: There are differences between the both.

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Infact your licensed personnel can't go on the Staten Island Ferry by his own admission.

MR. GROSSMAN: May I recall something--

THE COURT: May I recall to you the facts that were put into the record and that your own witness, Mr. Lieto, said that he could not even work on a Staten Island Ferry because he was not licensed to do it.

The ship he was licensed to work was too small. This is what he is pointing out is the difference.

MR. GROSSMAN: May I read to your Honor just to recollect--

THE COURT: Why don't you ask questions and get the record in instead of arguing with me from exhibits already in the record.

That you can put in your brief.

MR. GROSSMAN: All right, sir. I will.

Q Mr. Wesp, there came a point where the Department of Transportation decided to ask the Civil Service Commission for an exemption over the 5.5?

A Yes, sir.

Q That letter was dated June 10, 1972 and it is page 20 of Exhibit 1.

The letter that was written in 1972 was signed by George S.Meharry, Director of Personnel and Training.

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A Yes, sir.

Q What was your relationship to Mr. Meharry at this point?

A At that point in time I was Chief of the Compensation and Executive Staffing Division. Mr. Meharry was my supervisor.

Q Did you participate in the preparation of that application to the Civil Service Commission?

A Yes, sir.

Q You did?

A Yes, sir.

Q Were any of the plaintiffs consulted in connection with the prepara ion of that?

MR. LAWYER: Of that letter?

MR. GROSSMAN: The preparation of the application, yes, represented by the lette: .

THE WITNESS: I can't answer that. I don't know. The New York Coast Guard was, Local 33 was, the Headquarters of the Coast Guard was, and certainly the office of the Secretary and our office of general counsel.

Q How do you know that?

A I did it myself.

Q But whose application was it, the Department of Transportation?

A The Department of Transportation's application.

Q It certainly cannot be construed to be the application of the plaintiffs, is that right, themselves?

A I don't think the procedure that the Commission set up provides anything for the plaintiff.

Q Correct.

But it definitely was the application of the Department of Transportation, not of the plaintiffs?

A Yes, sir.

Q And in the next application dated July 27, 1973 you actually prepared the letter and signed it, is that correct, that is No. 8 and 9, Exhibit 1, your Honor.

In your last paragraph you stated as follows:

"Sir:

"We ask your prompt and earnest consideration of this request for a tandem relationship approval so the proper 1973 survey increase may be installed.

"If there are any further discussions that will help in arriving at your decision, we will be glad to arrange a meeting at any time."

Did you believe the application was well-merited at that point?

A Yes.

Q Did you include in the letter every possible

Q:mg 54 Wesp-cross

fact that you could think of or that was available to you as a result of your surveys?

A Yes, to be responsive to the framework or the outline that is included in the FPM letter which sets up this program and to which agencies are permitted to respond.

Q And in addition you had the experience of having been turned down or rejected the year before?

A That is correct.

Q How did you endeavor, sir, and if you want to see the letter, I will exhibit it to you--

A I think I recall it well enough.

Q How did you try to overcome the previous year's rejection?

THE COURT: What is the purpose of that question?

MR. GROSSMAN: Your Honor, I am trying to show that there was not due diligence on the part of Transportation, not only in these applications, but throughout the years, and failure to give these plaintiffs what was their due.

THE COURT: I don't see how you can draw that. They made an application, didn't they?

MR. GROSSMAN: Yes,sir. But in view of the fact that there had been an experience just the year before of rejection, we have a page-and-a-half letter and nothing else.

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MR. LAWYER: I think I will object.

THE COURT: Sustained.

I don't find this man a recalcitrant witness as far as these claims are concerned.

I gather he tried to give them what he thought they were entitled to and he tried to get an exemption for them.

He didn't have to do anything, did he?

MR. GROSSMAN: No, sir.

THE COURT: He did, he did something.

MR. GROSSMAN: But I am --

THE COURT: He did quite a bit from reading the letters.

MR. GROSSMAN: I am at a disadvantage. I think I might be able to demonstrate to you that your last statement is such that he did quite a bit. If I had the surveys now to cross-examine Mr. Wesp with --

THE COURT: That is not his fault or Mr. Lawyer's fault.

MR. GROSSMAN: I am not blaming Mr. Wesp or Mr. Lawyer.

THE COURT: You could have had them if you had designated them in the subpoena.

Didn't you take this man's deposition?

Q:mg 56 Wesp-cross 7-15

MR. GROSSMAN: Yes, sir. He said he did not know where they were in his deposition.

THE COURT: Then serve a subpoena on the Government and make them produce them.

MR.LAWYER: He was always talking about the Staten Island Ferry. I am taken by surprise. I don't know what our position is now on the increase. I don't know if the legal issues are the same. That is what we are trying here, nothing else in the complaint for which I prepared--

THE COURT: When I came down to start this case I thought it was based by theplaintiffs' own brief that they were entitled to parity in pay.

MR. GROSSMAN: May I please answer that? I think I have an explanation.

THE COURT: Read your brief.

MR. GROSSMAN: I agree with you.

THE COURT: It is a quarter to five and you finally agree with me that you changed your position.

MR. GROSSMAN: The result of both is the same. That is what the chart shows. If we had gotten the increases after 8/68 we would have been in parity, exactly the same.

THE COURT: That is not what you put in your brief and the order you are relying on does not say parity of base

pay. It says parity of increases.

Your brief talks about parity of base pay.

MR. GROSSMAN: Because the two become the same.

THE COURT: Don't give me the because. I am telling you, you focused me in wrong.

MR. LAWYER: I prepared for that whole theory and I am standing here quite frankly on what do I have to do to defend on this new theory.

It seems to me I shouldn't have to.

THE COURT: You know what you are being faced with now.

MR. LAWYER: I am not too sure.

MR. GROSSMAN: That is not an excuse on the part of Mr. Lawyer for not producing if he has the --

THE COURT: You can serve a subpoena.

MR. GROSSMAN: For not producing any order, directive, or so forth,changing the policy of the Treasury Department decision because that was alleged in the second paragraph of my complaint.

THE COURT: He said he is looking for it and you wanted to cross-examine this man so we brought him back from looking for it so you can cross-examine the man.

MR. GROSSMAN: I am finished.

THE COURT: Thank you.

REDIRECT EXAMINATION

BY MR. LAWYER:

Q Mr. Wesp, would you look at Exhibit 1,page 23, for a few minutes, sir, and see if that letter at all is the letter or document that you referred to which may have reflected the change in policy?

A No, sir, it is not.

Q That definitely is not?

A That definitely is not.

THE COURT: This is the letter from Mr.Hafflinger to Mr. Horan?

THE WITNESS: And some of this letter, to give you background--

MR. GROSSMAN: I object.

THE COURT: All right.

Q I want to read you a statement from Plaintiff's Exhibit 3, Mr. Wesp.

"Since the rates being paid to Governors Island Ferry personnel are greater than the prevailing rates of the total maritime industry in the New York Harbor, the Coast Guard adopted a policy to adjust its rates by the same cents per hour increases in basic rates for comparable officer and crew classifications in the City of New York

Staten Island Ferry.

"This was done effective 3 July 1966 and again 28 August 1968."

Now, sir, you have already testified about your problems with the word "policy."

I want to direct your attention specifically to those two dates.

Would the statement,again with your qualifications about the word "policy" be substantially correct with regard to the date July 3, 1966? That is as to the cents per hour increase.

A One thing in that total statement that bothers me --

THE COURT: You are not being asked about that. Answer his question.

A I am not sure.

Q Would you look at the letter yourself, the passages underlined?

A By taking the underlined and dispensing the problem or the difficulty with the word "policy" I think I would say yes to 3 July 1966.

I think I would agree that the result at 28 August 1968 was approximately the same thing.

Q But were the Staten Island Ferry rates taken,sir,

Q:mg 60 Wesp-redirect

cents per hour increases for the August 1968 --

THE COURT: He already said no.

THE WITNESS: I believe no.

MR. LAWYER: I am not going to have any more questions of this witness. He lives in Maryland.

I am to produce some documents. I am going to let the witness go unless I get a direction otherwise.

THE COURT: I have no need for him.

Do you have need for him?

MR. LAWYER: No, sir, he is going to help me find the documents because he knows what they are.

THE COURT: The problem may be on Mr. Grossman on admitting the documents.

Does Mr. Grossman accept the documents from the official files?

MR. GROSSMAN: I don't know what I am going to accept, your Honor. I don't know what I am going to be faced with.

THE COURT: You are going to be faced with official documents which this witness will take out of the file for introduction by Mr. Lawyer.

MR. LAWYER: By Mr. Grossman, I presume. He wants them. The burden is not on me in this case which bothers me. We are being asked to produce the documents

Q:mg 61

which, if we have them, I have no objection, but we are being made in effect to prove we did not behave arbitrarily.

THE COURT: He has a right to subpoena your files.

MR. LAWYER: He has a right to warn me about the case concerning the issue of the case.

It happened at lunchtime concerning the issue of the case.

THE COURT: All you have left is a request from Mr. Grossman to turn over to him wage surveys of 1972, 1973 and 1974.

MR. GROSSMAN: As well as 1968.

THE COURT: Yes, and 1968, and any documents in the files which show the adoption of a decision not to continue what they had been doing before.

MR. LAWYER: I will produce those surveys --

TEH COURT: What he claims you would do. You claim you were not doing what he claims you were doing. You say you never tied yourselves to Staten Island.

MR. LAWYER: Yes, sir. I will endeavor, with Mr. Wesp, to find all the surveys. That is no problem, I presume. With that adoption of the policy --

THE COURT: You are finished with Mr. Wesp?

MR. LAWYER: Yes, sir.

THE COURT: Anything else you want of this witness?

Q:mg 62

154

MR. GROSSMAN: No, sir.

THE COURT: You are excused.

(Witness excused)

MR. LAWYER: I have something rather embarrassing to bring up and I am going to give the Court a copy of the statute.

I will address myself to it in my memo of law we write.

THE COURT: Are you resting now?

MR. LAWYER: I will rest, yes.

THE COURT: Except for producing the documents?

MR. LAWYER: Yes, sir, and I make all my motions to dismiss the complaint.

THE COURT: You make all necessary motions?

MR. LAWYER: Yes. They shall be deemed made.

THE COURT: And decision is reserved.

What do you want to do now?

MR. LAWYER: At this time, 814, Section 432G is the document I have just handed up.

In substance that provision states that employees of Coast Guard vessels shall be limited to a maximum of $7500 per year plus I think a maximum of 25% overtime or other compensation on top of that.

THE COURT: The heading says Personnel of former

Q:mg 63

Lighthouse Service.

MR. LAWYER: Yes, sir, it does, and I will deal with that.

In the body of that regulation it makes it quite clear, it says "Coast Guard vessels."

However, the title refers to light ships and lighthouses.

The problem is this: Under the Army which once ran Fort Jay, Governors Island, that provision did not apply because it applies to the Coast Guard. Therefore, these employees were not under the provision, no doubt about it.

However, when the Coast Guard took over Governors Island and took over the ferry system, all of a sudden literally, this statute would apply.

No corrective legislation was ever introduced. I have discovered recently that the Department of Transportation and probably Treasury were aware of that and decided in their own minds that it did not apply, at least in spirit.

I have spoken with their house counsel. They cannot point to anything, and I certainly could not find anything, which says why it does not apply literally even though it does not apply spiritually.

Indeed these employees were making more than

Q:mg 64

$7500 and it was even lower some time after that. Back at the time of the transfer in 1966 they were making more than that. Nobody meant to cut their wages. Everyone in good faith presumed they would be covered under the so-called crews of vessels in general provision which they were under in the Army.

I only bring it up because I think literally the statute probably applies. We are not going to raise any objection obviously.

It would be ignoble to do so and we have no intention of doing so.

Quite frankly at this point I just don't know what effect it might or should have had on this suit.

THE COURT: Obviously in view of your statement I will not consider the section.

MR. LAWYER: Thank you.

I brought it up because I have no idea what the outcome of the case will be and some appellate court would run across it and wonder. I wanted to bring it to your attention.

RONALD H. WHELAN, et al.,
vs.
CLAUDE S. BRINEGAR, et al.

73 Civil 2819

February 20, 1975

- - -

THE COURT: As I understand it, the issue in this case is that because of an order issued by the authority with the responsibility of fixing the pay of the plaintiffs they should have received whatever their basic salary was at the time the Coast Guard took over plus whatever subsequent annual increments were given to the employees of the Staten Island Ferry.

MR. LAWYER: In actual physical dollars and cents.

THE COURT: Yes, in actual physical dollars and cents. That is what I understand the lawsuit to be about.

They claim for a period from 1966 until 1968 you failed to give them that money and they seek recovery of that money for that period. They say that you then gave them, for a short period of time, the increase equal to Staten Island rates so they are not asking you for any money for that interim period.

Then they reach a period when their brethren on the Staten Island Ferry received an hourly increase and you didn't match it and you haven't matched it until today, and they say they are entitled to that amount.

Those, as I understand it, are the claims made in

jq 2 66

this lawsuit. I gather your defense to be that you were never bound by the actual amounts of money granted to the Staten Island people.

MR. LAWYER: Yes, sir.

THE COURT: That is your position?

MR. LAWYER: Yes, sir.

THE COURT: There is a second area: the question of whether the Civil Service Commission's refusal to grant more than the 5.5 was not an abuse of discretion which I am asked to review.

MR. LAWYER: Yes, sir.

THE COURT: Is that the lawsuit, Mr. Grossman?

MR. GROSSMAN: I accept that fully, Your Honor.

THE COURT: Do you understand that now, Mr. Lawyer?

MR. LAWYER: Yes, sir.

- - -

THE COURT: Do you want us to meet tomorrow formally or do you want me to be in chambers available for when you want me to come down?

MR. LAWYER: If we find the documents we will notify the Court one way or the other tomorrow that we have not found them and we have to search files in Washington. I will inform the Court tomorrow.

I think it would not be good to schedule a formal session since I don't know what I will come up with.

THE COURT: If you do find them we can finish up the proof.

I will be in chambers and available at any time you want.

MR. LAWYER: Thank you.

MR. GROSSMAN: Thank you, your Honor.

...

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Ronald Howard Whelan	7	45	50	
Richard Lieto	52	73		
Anthony DiMaggio	78	86		
Simon R. Rosenthal	87	90	91	
William Henry Wesp	93	115	150	

EXHIBIT INDEX

Plaintiff	Identification	In Evidence
1		7
2		18
3		21
4		23
5		34
6		43
7,8		60
9		66
10		68

BCL: [illegible]
73-2255

STIPULATION AND ORDER RE EVIDENCE AND SUBMISSION OF DOCUMENTS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

RONALD H. WEILAN, et, al., :

Plaintiffs, : STIPULATION

-v- : 73 Civ. 2819 (CHM)

CLAUDE S. BRINEGAR, :
Secretary of the Department of
Transportation, et, al., ::

Defendants :

----------x

IT IS HEREBY STIPULATED AND AGREED by and between the parties respective attorneys, that:

(1) Any and all documents previously submitted to the Court in connection with pre-trial motions or otherwise are deemed to be in evidence for all purposes and there is no objection to the utilization by the Court of any such document in determining the merits of this action. Any and all possible objections to said documents or the contents thereof are waived.

(2) The documents hereafter described, copies of which are annexed hereto as exhibits to supplement the trial record (Supp. Ex.), subject to the approval of the Court, are hereby submitted in evidence for consideration by the Court in its determination of the merits of this action, and any and all possible objections to said exhibits or the contents thereof are waived:

Supp. Ex.	Dated	Scrivener	Pages
1	5/17/68	A.J. Carpenter	One
2	6/21/68	Roy L. Barton	One
3	9/19/68	A.O. Wagner	One
4	10/31/68	A.O. Wagner	Four

BCL:am
73-2255

Supp. Ex.	Dated	Scrivener	Pages
5	12/23/68	Roy L. Barton	Four

Dated: New York, New York
April 14, 1975.

HARRY GROSSMAN, ESQ.
Attorney for Plaintiffs
515 Madison Avenue
New York, New York 10022

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for Defendants

By: Bobby C Lawler
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Assistant United States Attorney
Office & Post Office address:
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-1974

SO ORDERED:

U. S. D J.

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

Address reply to
COMMANDER (p)
Third Coast Guard District
Governors Island
New York, N.Y. 10004
(212) 264-4913

12531
17 MAY 1968

From: Commander, Third Coast Guard District
To: Commandant (PC)

Subj: Wage schedule for ferryboat personnel at New York Base

1. The existing wage schedule for licensed and unlicensed personnel employed in the operation of the Governors Island ferry service at New York Base is based upon the Army - Air Force Wage Board Schedule released 4 April 1966. A supplementary increase of 10¢ per hour for unlicensed personnel and 15¢ per hour for licensed employees was authorized by the Commandant effective 3 July 1966. No further evaluation of wages has been made to date.

2. Local 333, National Maritime Union, the employee organization representing the ferryboat personnel has requested a review of our wage rates. This has been prompted by a new contract recently negotiated by the NMU with the City of New York pertaining to the Staten Island municipal ferry system. This new contract authorized a 32-hour work week in lieu of a 40-hour work week.

3. Past practice at Governors Island, based on a Treasury Department Wage Board decision, has been to have our wages parallel those on the New York City ferries. However, I am reluctant to recommend continuation of this practice --

a. Because the City no longer operates ferries of comparable size and length-of-run.

b. Because doing so has the effect of making us indirectly subject to pressures and politics of strikes and inter-union competition. Two unions represent the City crews; only NMU represents our men.

4. Before submitting the NMU proposal I need more information regarding rates being paid personnel performing similar duties -- not necessarily on ferries -- in the New York area. To acquire this information I propose to conduct an informal survey of related city, federal and commercial operations. The union should be invited to work with us in making such a survey and they will be. They have agreed in general with the principle. Your approval is requested.

A. J. Carpenter
A. J. CARPENTER

Copy to:
Commanding Officer, Base New York

192a

1710
21 June 1968

From: Commandant
To : Commander, Third Coast Guard District(p)

Subj: Wage schedule for ferryboat personnel at Coast Guard Base, New York

1. In accordance with your request of 17 May 1968, approval is granted to conduct an informal wage survey pertaining to your ferryboat personnel. The Department of Transportation has also concurred with your request.

2. Mr. Howard L. Griffin of this office will be available to assist in developing plans and procedures for conducting the survey. He will report to your office on 1 July for this purpose.

ROY L. BARTON
By direction

cc: W. H. Wrap, DOT

CNEIL:fmc:X8008:PC-1:6/21/68

MAILED: JUN 21 1968

193a

Commanding Officer
U.S.Coast Guard
Governors Island, New York
(212) 264-3690

16600
19 September 1968

From: Commanding Officer, Base, New York
To: All Hands Governors Island Ferry

1. At a recent meeting with your Union representatives from Local 333, National Maritime Union, I learned that you are vitally concerned about what progress is being made in the matter of review of the wage board pay scale for Coast Guard employees involved in Governors Island Ferryboat operations. I don't blame you for being concerned because I am sure it must appear to you as if nothing at all is happening. This is not so. Let me bring you up to date.

2. Some time ago your Union representatives called to our attention the fact that the wage picture in New York Harbor had changed significantly since your last raise in July 1966. To gain a full understanding of that change and to gather facts with which to present meaningfully your case to the Commandant a Study Group was formed. It has the sanction of the Commandant and the District Commander.

3. The group has met several times and is now close to finishing its work, which basically consists of visiting and studying various harbor operations to determine which ones if any are most nearly comparable to yours in terms of work performed by individuals. I expect the Group to finish its study and provide the results to me before 1 October, at which time we will meet with your Union representatives once again. Throughout the course of the study, your Union officials have had and will have full opportunity to comment on the findings and procedures and to present data to support your views.

4. Your representatives have pressed here for early action but it simply has not been possible nor can I estimate how long it will take the Commandant and the Department of Transportation to act on this case. We will press ahead for an early decision, but being the first decision of its kind in a new Department, it will probably not be forthcoming as quickly as you would like. You may be assured, however, that we will not let this drag on any longer than necessary. You are, after all, Coast Guard employees in whom we at Base, New York have a very great vested interest and a sincere concern. Bear with us a bit longer, please.

A.O. WAGNER, signed

Re-typed copy of Supp. Ex. 3

Commanding Officer
U.S. Coast Guard
Governors Island, New York
(212) 264-3960

4600
19 September 1968

From: Commanding Officer, Base, New York
To: All Hands Governors Island Ferry

At a recent meeting with your Union representatives from Local 333, National Maritime Union, I learned that you are vitally concerned about what progress is being made in the matter of review of the wageboard pay scale for Coast Guard employees involved in Governors Island ferryboat operations. I don't blame you for being concerned because I am sure it must appear to you as if nothing at all is happening. This is not so. Let me bring you up to date.

2. Some time ago your Union representatives called to our attention the fact that the Wage picture in New York Harbor had changed significantly since your last raise in July 1966. To gain a full understanding of that change and to gather facts with which to present meaningfully your case to the Commandant a Study Group was formed. It has the sanction of the Commandant and the District Commander.

3. The group has met several times and is now close to finishing its work, which basically consists of visiting and studying various harbor operations to determine which ones if any are most nearly comparable to yours in terms of work performed by individuals. I expect the Group to finish its study and provide the results to me before 1 October, at which time we will meet with your Union representatives once again. Throughout the course of the study, your Union officials have had and will have full opportunity to comment on the findings and procedures and to present data to support your views.

4. Your representatives have pressed here for early action but it simply has not been possible nor can I estimate how long it will take the Commandant and the Department of Transportation to act on this case. We will press ahead for an early decision, but being the first decision of its kind in a new Department, it will probably not be forthcoming as quickly as you would like. You may be assured, however, that we will not let this drag on any longer than necessary. You are, after all, Coast Guard employees in whom we at Base, New York have a very great vested interest and a sincere concern. Bear with us a bit longer, please.

A.O. WAGNER, signed

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

Reply to
Commanding Officer (o)
U. S. Coast Guard
Governors Island
New York, New York 1000
(212) 264-3690

4600

OCT 31 1968

From: Commanding Officer, Base New York
To: Commandant
Via: Commander, Third Coast Guard District

Subj: Wages for Base New York Ferryboat Personnel

1. Following procedures set by the Army, and subsequently by the Treasury Department Wage Board, Local 333, of the National Maritime Union has asked that Governors Island Ferry personnel be granted the same pay raise as received in a three year contract by personnel working on New York City ferries on 1 July 1967. Although this request is in conformance with the Treasury Department Wage Board Decision of 31 March 1966, it is, unfortunately, made more difficult to grant because the City contract is based on a 30 hour week which, when transposed into cash equivalent for a 40 hour week, amounts to a 34% increase.

2. To better evaluate the Union's request, and with the approval of the Commandant, Base New York initiated an informal study of the wages paid in a representative segment of the Marine Transportation industry in New York Harbor. This study examined in some detail the functions performed by harbor marine transportation personnel to determine the degree of comparability, if any, with our own ferry operation. Upon completion of the study it appears evident that while the ferry operations in the harbor are comparable in mission and types of craft, they are not strictly comparable in terms of function and responsibilities of personnel. It is also evident that there is virtually no relationship between hourly wage rates and annual earning potential of various jobs in the various segments of the industry.

3. Upon completion of the study, the following alternative solutions were considered:

a. Grant the Union's request, en toto, retroactive to 1 July 1967 - a 34% raise. This in effect, compares the Governors Island ferry operation with the last remaining other ferry system in the area,

ignoring the remainder of the harbor transportation industry. It is, however, in conformance with the spirit of the 1966 Treasury Department Wage Policy Board agreement. (Estimated cost $454,000.)

b. Grant the request but to hold down the costs, schedule it in equalizing installments, (11% of the present basic rate effective 1 July 1967, an additional 11% of the present basic rate effective 1 July 1968 and an additional 12% of the present basic rate effective 1 July 1969) and eliminate the present policy of paying a Sunday premium pay of 25%. (Estimated cost $293,000.)

c. Grant the request but to hold down the costs, schedule it in equalizing installments over the next two years, (17% increase of the present basic rate effective 1 July 1968, and an additional 17% increase of the present basic rate effective 1 July 1969) and eliminate the present policy of paying a Sunday premium pay of 25%. (Estimated cost $223,000.)

d. Grant a pay increase equivalent to that received by other Base. New York Wage Board employees in 1967 and 1968 (approximately 8% total). This proposal is counter to the Provisions of the Wage Classification Act of 1949 because it does not compare the wages with the primary rates and practices of the Maritime industry. (Estimated cost $48,200 plus FY 70.)

e. Grant a pay increase equivalent to that granted by the Army - Air Force Wage Policy Board in November 1967 to the New York Harbor Army Marine personnel, not a true transportation agency. This increase amounted to 17% and would be retroactive to July 1967. (Estimated cost $227,000.)

f. Grant the same pure cents-per-hour increase (exclusive of adjustment for 30 hour week) received by City employees. This amounts to a 7.4% raise, which is less than other Wage Board personnel will have received over the three year period. (Estimated cost $98,800.)

g. Adjust wages so as to conform to the average hourly rate paid representative workers in the area. This proposal does not represent the true earning power of individual workers, as shown in the study. This plan would amount to no pay raise for Master, Chief Engineer or Deckhand and 3% for the oiler. (Estimated cost $11,200.)

CO, New York Base ltr 4600

h. Adjust wages so as to permit employees to earn an annual wage comparable to that actually earned by personnel doing similar work elsewhere in the harbor. These annual wages, as reflected in the study, take into consideration overtime, hazard duty pay, large shift differentials etc., not all of which are available to Governors Island ferry employees. This raise would be approximately as follows: Masters 22%, Oilers 9.4%, Chief Engineers 18%, Deckhands 18%. Adoption of this proposal would require a much more extensive and detailed study in order to more exactly determine the figures, which figures were necessarily estimated in the present study. (Estimated cost $217,700.)

i. Make no change in present pay structure.

4. Based on the findings and full consideration of the study, I recommend the following:

a. (1) Award a pay increase of 34%, spread over a two year period as follows:

17% of the 1966 pay rate effective 1 July 1968

An additional 17% of the 1966 pay rate effective 1 July 1969.

(2) Alternately, award a pay increase of 34%, spread over a three year period as follows:

11% of the 1966 pay rate effective 1 July 1967

An additional 11% of the 1966 pay rate effective 1 July 1968

An additional 12% of the 1966 pay rate effective 1 July 1969.

b. Eliminate the present policy of paying a Sunday premium pay of 25%. (This applies to the above recommendations only.)

c. Request the Army - Air Force Wage Policy Board to consider Governors Island ferry personnel in their next survey of the harbor and make recommendations concerning wage rates.

CO, New York Base ltr 1600

d. Avoid any direct relationship with the Staten Island Ferry wage schedule in future wage considerations due to the peculiar nature of New York City wage problems.

5. Officers of Local 333 of the National Maritime Union have expressed approval of the recommendation stated herein.

A. C. WAGNER

Encl: (1) Informal Study of Wages in New York Harbor Marine Transportation Industry.

UNITED STATES GOVERNMENT

Memorandum

PC-2
12500

TO : Chief, Office of Personnel

DATE: 23 December 1968

FROM : Chief, Civilian Personnel Division

SUBJECT: Wages for Base New York Ferryboat Personnel

1. Background

a. The existing wage schedule for personnel employed in the operation of the Governors Island ferry service is based upon a wage relationship with rates paid to personnel on the Staten Island Ferry run by the city of New York, the only remaining passenger and vehicle ferry operating in the New York Harbor area. The last increase of 10¢ per hour for Coast Guard unlicensed personnel and 15¢ per hour for licensed employees was effective 3 July 1966. This increase was equivalent to that granted the personnel of the Staten Island ferry system on 1 July 1966.

b. 5 USC 5342 provides that the pay of officers and members of crews of vessels shall be fixed and adjusted from time to time as nearly as is consistent with public interest in accordance with prevailing rates and practices in the maritime industry. Local 333, National Maritime Union, (NMU), the employees' organization representing the ferryboat personnel has requested a review of the wage rates. This was prompted by the wage agreements tentatively approved by the city of New York for licensed and unlicensed ferryboat personnel on its Staten Island ferry system who are represented by the NMU. The wage agreements consist of agreed annual rates based on a 32-hour workweek in lieu of a 40-hour workweek which when transposed into cash equivalent for a 40-hour week amounts to approximately a 34% increase, such increase being retroactive to 1 July 1967. Since tentative approval the collective bargaining efforts with the NMU on deckhands, stokers, oilers and water tenders have been completed and these employees are now being paid at the agreed annual rate. The captains, engineers and other licensed personnel have agreed to the new rates. However, they will not be paid the agreed annual rates until each employee has signed the agreement. The Third District has advised us that this will be completed very soon.

c. Commandant (PC) letter dated 21 June 1968, in response to their request, authorized Base New York to conduct an informal survey by collecting wage data in the local harbor area for analysis and to recommend proposals for a wage adjustment.

2. Discussion

a. Based on the findings and full consideration of the study, the Commanding Officer, Base New York recommended the following:

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

(1) Award a pay increase of 34% spread over a two-year period as follows:

17% effective 1 July 1968

An additional 17% effective 1 July 1969. (Estimated cost $223,000.)

(2) Alternately, award a pay increase of 34% spread over a three-year period as follows:

11% effective 1 July 1967

An additional 11% effective 1 July 1968

The remaining 12% effective 1 July 1969. (Estimated cost $293,000.)

(3) Eliminate the present policy of paying Sunday Premium Pay of 25%.

(4) Request other Government agencies to consider Governors Island ferry personnel in their next surveys and make recommendations concerning wage rates.

(5) Avoid any direct relationship with the Staten Island ferry wage schedule in future wage considerations.

b. Upon examining the proposals submitted by the Commanding Officer, Base New York, the Commander, Third Coast Guard District recommended that:

(1) Governors Island ferry personnel should receive the following wage increase:

GRADE	PROPOSED RATE	PRESENT RATE	DIFF	PERCENT INCREASE	ANNUAL INCREASE	AUTH NO. OF EMPLOYEES	TOTAL ANNUAL COST
MASTER	5.64	5.09	55	10.8	1144.00	7	8008.00
CHIEF ENGR	5.46	4.91	55	11.2	1144.00	7	8008.00
OILER, FIREMAN	4.06	3.74	32	8.6	665.60	15	9984.00
DECKHAND	3.90	3.74	16	4.3	332.80	20	6656.00
OILER, FIREMAN*	4.06	3.74	32	8.6	332.80	2	665.60
DECKHAND*	3.90	3.74	16	4.3	166.40	3	499.20
						GROSS ANNUAL COST	$33,820.80

NOTE: This is an approximate cost which does not include additional costs which would be incurred due to the hiring of intermittent employees on a temporary basis and cost of authorized overtime.

* Summer replacements - on the payroll approximately 6 months.

(2) These pay adjustments be made retroactive to 30 June 1968.

(3) The 25% Sunday Premium Pay be retained.

(4) The overtime rate of 1½ times the basic rate be paid as before.

3. Conclusions

a. We cannot find any provision under Civil Service Regulations or Title 5, United States Code, which requires retroactive payment to 1 July 1967. We feel that the rule used to establish effective dates for other prevailing rate systems, i.e., the increase is effective not later than the first day of the first pay period which begins after the 44th day, excluding Saturdays and Sundays, following the date on which the wage survey was ordered or authorized, should prevail. Therefore, 25 August 1968 could be the effective date for the wage increase.

b. 5USC 5544 requires that employees whose basic pay is fixed and adjusted from time to time by a wage board or similar administrative authority serving the same purpose are entitled to additional pay at the rate of 25% of their hourly rate of basic pay for each hour of Sunday work performed. In this context, we feel the Sunday Premium Pay must be paid.

c. In view of the recent implementation of the new Coordinated Federal Wage System (CFWS) and the exclusion of maritime personnel from under its present coverage, we feel that any requests to include our ferryboat personnel in any future New York area surveys would not be honored. Therefore, any subsequent wage adjustments would be made under our present practices including relationship with the Staten Island ferry wage schedule until the National Wage Policy Committee recommends inclusion of maritime personnel under the CFWS.

d. As stated above, the wage agreements for Staten Island Ferry employees consist of agreed annual rates based on a 32-hour workweek in lieu of a 40-hour workweek. We conclude since no comparability exists in ferry operations in the harbor area that it would be inconsistent with public interest and unfair to Coast Guard employees in the New York area to adjust the agreed annual rates of Staten Island employees to other than the Government's basic 40-hour workweek. Accordingly, wage rates for Coast Guard employees should be determined by dividing the agreed annual rates of similar Staten Island positions by 2080 (total hours in a workyear) as follows:

Agreed Annual Rates

Captain	$11,732 ÷ 2080 = $5.64 p.h.
Engineer	11,354 ÷ 2080 = 5.46 p.h.
Oiler	8,446 ÷ 2080 = 4.06 p.h.
Deckhand	8,118 ÷ 2080 = 3.90 p.h.

4. Recommendations

a. After careful review and thorough analysis of the study, it is recommended that the attached wage schedule for ferryboat personnel be approved and issued.

b. Grant the pay increase retroactively to 25 August 1968.

c. Retain the 25% Sunday Premium Pay.

d. Retain the present overtime rate of 1½ times the basic rate.

5. Coordination

a. The Department has been apprised of our recommendation concerning the proposed wage schedule. They suggested that we may want to consider rounding out the percent increases, e.g., 10.8% to 10%; 11.2% to 10%; 7.6% to 8% and the 4.3% to 4%. As stated on their part, it was only a suggestion and concur in either schedule that is approved.

b. We have discussed the proposed wage increase with ECV and have been advised that the necessary funds are available.

c. Upon approval, we propose to conduct conferences with the District Base New York and Local 333, for the purpose of explaining our position recommending the approved wage schedule.

Roy L. Barton
ROY L. BARTON

Encl: (1) Wage Schedule

TO : Chief, Civilian Personnel Division

FROM: Chief, Office of Personnel

APPROVED Lee Mary Zuta
DISAPPROVED _____

J. R. Scullion
J. R. SCULLION

DECISION OF HON. CHARLES M. METZNER, D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

RONALD H. WHELAN, et al.,

Plaintiffs,

#43329

-against-

73 Civ. 2819 (CMM)

CLAUDE S. BRINEGAR, Secretary of the Department of Transportation, et al.,

Defendants.

- x

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
NOV 3 3 34 PM '75

METZNER, D. J.:

Plaintiffs are the officers and crew members of the Governors Island ferry and are federal employees. They seek back wages which they claim to have been improperly denied them, and a pay adjustment for the future.

Up to June 1, 1966, the Army was responsible for the operation of this ferry. On that date, its operation was turned over to the Coast Guard which is within the jurisdiction of the Treasury Department. On July 3, 1966, the Wage Board of the Treasury Department entered an order granting plaintiffs the same cents per hour increase over their base pay as had been granted the

MICROFILM
NOV 3 1975

employees of the Staten Island ferry. In addition, this order stated that such parity of increase would be maintained in the future. On October 15, 1966, jurisdiction over this ferry operation was transferred to the Department of Transportation.

No increases were granted plaintiffs from July 1, 1967 to February 14, 1969, when a partial increase was allowed retroactive to August 28, 1968. In October 1969, another retroactive increase to August 28, 1968 was granted. These adjustments were equal to the increases granted the employees of the Staten Island ferry, and continued through June 30, 1970. The dispute up to this point is that plaintiffs did not receive a parity of increase for the period July 1, 1967 to August 28, 1968.

Defendants contend that these retroactive increases were not based on parity of increase referred to in the Treasury Wage Board order of July 3, 1966, but rather resulted from a survey conducted by the Department of Transportation. 5 U.S.C. § 5348(a) provides that the pay of officers and members of crews of vessels shall be adjusted from time to time "as nearly as is consistent with the public interest in accordance with prevailing

wages and practices in the maritime industry."

Plaintiffs were no longer under the jurisdiction of the Treasury Department on Oct.15, 1966. The rates of pay from that time on were the concern of the Department of Transportation which of course was free to fix such rates within the limits of the law and regulations. This is exactly what happened when jurisdiction over these employees was first transferred from the Army to the Treasury Department. The latter reviewed the situation and issued its Wage Board order on March 31, 1966.

With the advent of the Department of Transportation, another review was in order. Incidentally, because the Department had just been set up, this review took longer than necessary. The review was conducted pursuant to Section 5348(a). The union representatives of the plaintiffs were fully advised as the study went forward and were afforded the opportunity to comment on the findings. The retroactive adjustments of February and August 1969 were made after a study of the prevailing wages in the New York Harbor area.

Interestingly enough, the study found that the wages paid to employees of the Staten Island ferry were

higher than the prevailing rates. The Staten Island ferry employees are only one segment of the total employee force which embraces the Circle Line, tugboats, etc.

There was no duty imposed on the Department of Transportation to make any adjustments in the wage scale for the period July 1, 1967 to August 28, 1968. Plaintiffs have made no showing that they were not being paid the prevailing rate, assuming that the words "from time to time" in Section 5348(a) call for a yearly review.

We turn now to the second asserted grounds for relief. In March of 1971, the union requested a 53 per cent wage increase based on an agreement with maritime workers in New York. Any move in this direction was thwarted by the wage freeze imposed on August 15, 1971 by Executive Order 11615.

On January 11, 1972, the Civil Service Commission was given authority to fix pay increases for federal governmental employees. Pursuant to Executive Order 11639, the Department of Transportation, on March 5, 1972, granted plaintiffs the maximum increase allowable of 5.5 per cent. There followed another departmental study which recommended that 8.5 per cent should be the proper increase. An

application to the Civil Service Commission for an exemption from the guidelines to allow this additional increase was denied.

Similarly in 1973, another 5.5 per cent increase in pay was granted. Again a study of prevailing wages in the area revealed that the increase should be 10.13 per cent over 1972, but the Civil Service Commission refused an exemption.

The basis for an exemption from the maximum rates permitted by the wage freeze is found in Section 2(b) of the Executive Order which sets forth the conditions as:

> "(i) a tandem relationship exists between a Federal pay schedule for a specialized employee unit and pay increases granted in a specialized activity in the private sector, (ii) the Pay Board has permitted a pay increase for the specialized activity in the private sector which is in excess of the guidelines, and (iii) it is determined that a comparable increase is essential to the continued operation of the Government service concerned." (37 Fed. Reg. 521)

The refusals of the Civil Service Commission to allow an exception to the 5.5 per cent limit may only be set aside on a showing that there is a lack of substantial evidence to support the finding. In 1972 the Commission refused the request for an additional increase because

it found that none of the three conditions set forth above was met. In 1973 its refusal relied on failure to meet the first and third conditions.

Plaintiffs have failed to show lack of substantial evidence to support the Commission's rulings. It may be that at times "a ferryboat is a ferryboat is a ferryboat," but not for the purposes of this action. In the first place, there was no tandem relationship in the pay schedule between the Staten Island ferry employees and plaintiffs. The scale was different. Only for a short period of time was the amount of increase the same. As pointed out above, the retroactive increases granted from 1968-1970 were based on prevailing rates in the harbor as a whole and not on an effort to equate the increases with Staten Island.

Secondly, it is perfectly clear from the record, and plaintiffs have failed to show otherwise, that a comparable increase was necessary to the continued operation of the government service. In fact, the ferryboat wage schedule for nonsupervisory personnel is higher than the government's Coordinated Federal Wage System (CFWS) for similar personnel in the New York area. The plaintiffs

here are excluded from CFWS. 5 U.S.C. § 5102(c)(8). Consequently, there is no difficulty obtaining employees in this area. In addition, some of the licensed personnel could not, under the limitations of their licenses, work on the Staten Island ferry.

Judgment for the defendants.

So ordered.

Dated: New York, N. Y.
November 3, 1975

Charles L. Brieant
U. S. D. J.

JUDGMENT DISMISSING COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

RONALD H. WHELAN et al.,
Plaintiffs,

-against-

CLAUDE S. BRINEGAR et al.,
Defendants.

----------X

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Charles M. Metzner, United States District Judge, on February 20, 1975, and at the conclusion of the evidence the Court having reserved decision, and the Court thereafter on November 3, 1975, having handed down its opinion in favor of the defendants, it is,

ORDERED, ADJUDGED AND DECREED: that defendants CLAUDE S. BRINEGAR, Secretary of the Department of Transportation, Admiral Chester R. Bender, Commandant of the United States Coast Guard and ROBERT E. HAMPTON, JANE SPAIN and L.J. ANDOLSEK, constituting the members of the United States Civil Service Commission, have judgment against all plaintiffs RONALD H. WHELAN, et al., dismissing the complaint.

Dated: New York, N.Y.
November 6, 1975.

RAYMON F. BURGHARDT

Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

RONALD H. WHELAN, et al.,

Plaintiffs,

-against- 73 Civ. 2819 CMM)

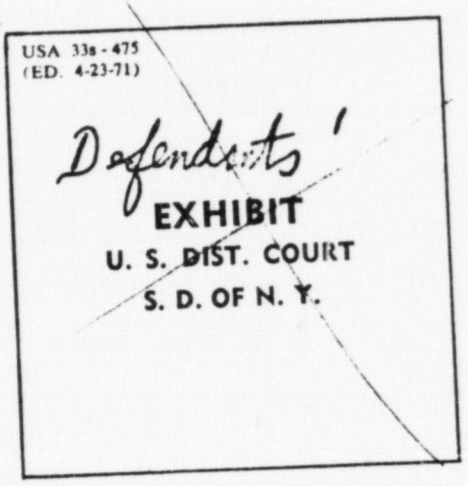
CLAUDE S. BRINEGAR, Secretary of
the Department of Transportation, et al.,

Defendants.

----------x

EXHIBITS

PLAINTIFFS' EXHIBIT 1





I, James C. Spry, Executive Assistant to the Commissioners, United States Civil Service Commission, hereby certify that the attached documents constitute copies of all documents utilized by the Commission in examination of requests by the United States Department of Transportation for exceptions to the 5.5 per cent wage increase guidelines under Executive Order 11639, for personnel employed on ferryboats operated by the United States Coast Guard at Governor's Island, New York. These documents are true copies of documents under my official custody and control.

James C. Spry
Executive Assistant
to the Commissioners

Washington, D.C.
October 3, 1974

21ha

RETURNED

OCT 24 1973

Mr. William A. Wesp
Acting Director of Personnel
and Training
Office of the Secretary
of Transportation
Washington, D.C. 20590

No other correspondence received
REGARDING ATTACHMENT
SECTION

Dear Mr. Wesp:

This is in further reply to your letter of July 27, 1973, concerning wage increases for ferryboat employees of the Coast Guard at Governor's Island, New York.

As noted in your request, Chairman Hampton's letter dated August 23, 1972, informed you that the Commission had not approved as an exception to the 5.5 percent guideline an earlier proposed adjustment for the licensed and unlicensed ferryboat employees of the Coast Guard at Governor's Island, New York. In fact, it was concluded that none of the three conditions for exception outlined in Executive Order 11639 were met.

After reviewing the material accompanying your request and additional information supplied by a member of your staff, we are still unable to find any basis for approving the additional percentage increase requested over 5.5 percent for ferryboat employees of the Coast Guard at Governor's Island, New York.

The first condition for exception as outlined in E.O. 11639 - that a tandem relationship exists between a Federal pay schedule for an employee unit and pay increases granted in an activity in the private sector - has not been met. No evidence was presented that the pay practice for these ferryboat employees has been identical as to the timing and amount of general increases for a closely related group of private maritime employees.

The second condition - the Pay Board has permitted a pay increase for the activity in the private sector which is in excess of the guidelines - has been met. On February 5, 1973, the Pay Board approved a 10 percent second year pay adjustment increase for hourly rated maritime employees in New York City to be effective April 1, 1972. This Pay Board case was No. 2322.

Again we cannot view the third condition - a comparable increase is essential to the continued operation of the Government service concerned - as being met. No additional information has been presented to support this condition. In fact, out of a total of 12 employee separations in calendar year 1972, no vacancies remain to be filled at the present time.

Exceptions to the 5.5 percent guidelines are only made when all three of the conditions outlined in E.O. 11639 are met. Since only one condition has been met, the Commission cannot approve as a exception to the 5.5 percent guideline the proposed adjustment for the licensed and unlicensed ferryboat employees of the Coast Guard at Governors Island, New York.

Sincerely yours,

11/24/71

Raymond C. Weissenborn
Chief, Pay Policy Division

PV-73-1541
PPW:ALevan:pe
8/29/73

8/28/73
8/29/73

OFFICE OF THE SECRETARY
U. S. C. S. C.
OCT 24 1973
SENT AND VERIFIED BY

UNITED STATES GOVERNMENT 216a U.S. CIVIL SERVICE COMMISSION

Memorandum

Subject: Request for exception to the 5.5 percent annual wage increase limit under the Economic Stabilization Program

Date: OCT 5 1973

In Reply Refer To: PPW:ALevan:pe

Your Reference:

From: Raymond Jacobson, Director
Bureau of Policies and Standards

Thru: Executive Director

To: The Commission

Purpose

This memorandum recommends against approval of an exception to the 5.5 percent annual wage increase ceiling limitation as recommended by the Department of Transportation for ferryboat employees of the Coast Guard at Governor's Island, New York.

Background

The requirements and basis for approving exceptions to the 5.5 percent annual ceiling limitation on wage adjustments are discussed in the background paper attached to this memorandum.

Basis for Department of Transportation Recommendation

In accordance with provisions of FPM Letter 532-55, the Department of Transportation has recommended that the following Coast Guard ferryboat job category wage rates, covering 49 employees at Governor's Island, New York, be approved effective July 8, 1973, as an exception to the 5.5 percent limit on wage increases:

Category	Wage Rate
Deckhand	$5.37
Oiler	5.51
Engineer	7.22
Master	7.49

The above wage rates represent a 10.13 percent increase over the 1972 rates and reflect the rates Transportation would authorize if not restricted by the 5.5 percent guideline.

This request pertains to the same employees for whom a similar request for exception to the 5.5 percent ceiling limitation was disapproved by the Commission on August 25, 1972. In fact, at that time it was concluded that none of the three conditions for exception outlined in Executive Order 11639 were met.

3

Keep Freedom in Your Future With U.S. Savings Bonds

Transportation's recommendation for the exception to the 5.5 percent guidelines is based on:

a. Tandem relationship requirements

--The pay rate for the deckhand job category at Governor's Island is based on the weighted average of rates paid to similar positions of five commercial marine companies operating vessels in the New York harbor area. Rates for the other categories are established by means of a percentage differential formula. This practice has been followed for the past two years.

--Effective dates of the last three increases for these ferryboat employees have been August 25, 1968; March 5, 1972; and July 8, 1973.

b. Increases permitted by the Pay Board

--On February 5, 1973, the Pay Board approved a 10 percent second year pay adjustment increase for hourly rated maritime employees in New York City to be effective April 1, 1972. This was Pay Board case No. 2322.

c. Increases are essential to the continued operation of the Government service concerned

--The mission of the ferry service is to move people, vehicles, and essential supplies to and from the Coast Guard Base located on Governor's Island.

--The Commission has approved a 9.43 percent increase in the New York Harbor Boat Schedule issued by the Department of Defense. The Coast Guard believes that approving a tandem relationship increase for one government agency with maritime employees and disapproving it for another agency in the same wage area creates a situation interpreted by the affected employees as inequitable, and one which cannot be satisfactorily explained to the unions.

Conclusion

There has been no significant change to two of the conditions that existed at the time of the last request to warrant granting an exception to the 5.5 percent guidelines for this request.

No evidence was presented that the pay practice for these ferryboat employees has been identical as to the timing and amount of general increases for a closely related group of private maritime employees. The second condition has been met, though, since the Pay Board did rule on the second year increase for maritime employees in New York City.

Like the first condition, we cannot view the third condition as being met. No additional information has been presented to support this condition. In fact, out of a total of 12 employee separations in calendar year 1972, no vancancies remain to be filled at the present time. Additionally, approval of a tandem relationship for one group of employees in a wage area does not mean that automatic exceptions should be granted to a similiar occupational employee group in the same wage area. Each employee unit is treated as an entity and therefore must individually meet all three conditions for exception. The referenced Department of Defense exception case was approved on its own merits and clearly met all three conditions for exception to the 5.5 percent guidelines.

Recommendation

That the proposed exception to the 5.5 percent ceiling covering ferryboat employees of the Coast Guard at Governor's Island, New York again be disapproved.

Action:

Bernard Rosen
Executive Director

Action:

L. J. Andolsek
Commissioner

Jayne B. Spain
Vice Chairman

Robert E. Hampton
Chairman

5

Attachment

Background Paper for Exceptions To the 5.5 Percent Annual Wage Increase Limit

On January 11, 1972, President Nixon signed Executive Order 11639 providing for pay adjustments for Federal prevailing rate systems. The Executive Order directed the Civil Service Commission to issue instructions to executive agencies on fixing the rates of basic pay for blue collar employees. The Executive Order requires that the instructions limit pay adjustments for these workers to guidelines established by the Pay Board in the same way that adjustments are now circumscribed for Federal white collar workers by a 5.5 percent limit on increases.

Under provisions of the Executive Order exceptions to the 5.5 percent guidelines can be permitted if the following three conditions are met: (1) that a tandem relationship exists between a Federal pay schedule for an employee unit and pay increases granted in an activity in the private sector, (2) the Pay Board has permitted a pay increase for the activity in the private sector which is in excess of the guidelines, and (3) a comparable increase is essential to the continued operation of the Government service concerned. It is our understanding that an exception to the guidelines was intended to apply only in the most unusual circumstances.

The tandem relationship under the first provision is defined by the Pay Board as a well established and consistently maintained policy of following the pay practices in effect for a closely related group of employees. The employees to which related may be another unit of employees of the same employer. They also may be related to the practices of other employers when they are within the same commonly recognized industry (such as a two-digit Standard Industrial Classification category). The practices involved must be identical as to the timing and the amount and nature of general increases in wages, salaries and other compensation for a particular unit of employees. The tandem relationship must be so clear that it virtually guarantees that a general increase, in the normal operation of the practice, would have been put into effect and have been applicable to work performed were it not for the existence of controls affecting Federal pay.

Under the second provision the Pay Board must have permitted increases in excess of the established guidelines to the private sector activity to which the Federal activity has a tandem relationship. Increases which went into effect in the private sector activity prior to the establishment of controls under the Economic Stabilization Act do not qualify as being permitted by the Pay Board.

The first two conditions for exceptions to the guidelines -- tandem relationship and increases being permitted by the Pay Board -- are clear cut and fairly easy to apply.

The third condition -- a comparable increase is essential to the continued operation of the Government service concerned -- presents some problems as to how this condition should be interpreted. Basically under this condition we think it should be shown that the recommended increases are necessary to attract and retain employees essential to the efficient operation of the Government service concerned. We feel that determinations on this third condition should be handled on a case basis and should be based on any two of the following factors.

1. National significance of mission of activity involved

   Under this factor we would consider the importance or impact of the mission of the activity involved to the Nation. This would generally include activities that provide a product or a service that could not be obtained elsewhere that is critical to the well being of the Nation.

2. Recruitment and retention problems of activity

   Under this factor the proposed increase would have to be necessary so that the involved activity becomes more competitive in his wage rate in order to attract or retain employees essential to the efficient operation of the activity. In this regard it would have to be demonstrated that current or expected vacancies have not been filled as a result of recruiting efforts of the activity.

3. Rationale for exception made by office submitting request

   Under this factor we would consider any additional information pointing out unusual circumstances in the case involved. This would include such matters as gains in productivity, amounts of increases given in previous years, union agreements, types of employees covered by the proposed wage adjustment, etc. In other words any unusual information not covered by the other factors would be considered.

221a

OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

July 27, 1973

Mr. Raymond Jacobson
Director, Bureau of Policies and Standards
U.S. Civil Service Commission
1900 E Street, N.W.
Washington, D.C. 20415

Dear Mr. Jacobson:

Recently the Department conducted its annual survey of the prevailing maritime rates in the New York Harbor area to establish appropriate wage increases for Coast Guard ferryboat employees at Governor's Island, New York. The results of this survey reveal the prevailing maritime wage rates in the New York Harbor have increased well beyond the 5.5% limitation placed on wage increases for federal government employees. Accordingly, it is requested that the full prevailing wage increase developed by our survey be authorized on the basis of its tandem relationship to the maritime industry in the New York Harbor. Our justification for this request is predicated on the following pertinent points:

- The New York Harbor maritime private sector labor contracts provided for a final 10% increase for the period April 1, 1972, to March 31, 1973, and these increases have been approved by the Pay Board.

- The increasing spread between private sector maritime wage rates and the DOT rates will make it increasingly difficult to attract replacement employees to fill vacancies, particularly those requiring licensed employees. Without ferryboat service, Coast Guard operations on Governor's Island would cease; this is the sole source of transportation for every employee on the island.

- The Commission has approved a 9.43% increase (retroactive to April 1, 1972) in the Harbor Boat Schedule issued by the Department of Defense. We understand this approval was based on a tandem relationship with the increases granted New York Harbor tug boat employees. We point this out for several reasons: (1) our 1972 similar request was denied; (2) tug boat companies are included in our survey; and, (3) approving a tandem relationship increase for one government agency with maritime employees and disapproving it for another in the same wage area creates a situation interpreted by our employees as inequitable, and one which cannot be satisfactorily explained to our unions.

A comparison of the 1968 rates, rates established in 1972, the 5.5% increase authorized in 1973, and the rates our survey conclusions support are shown as follows:

	1968 Rates	1972 Rates	1973 5.5% Increase	1973 Survey Rates	
Deckhand	4.56	4.81	5.07	5.37	+56
Oiler	4.68	4.94	5.21	5.51	+57
Engineer	6.13	6.47	6.82	7.22	+75
Master	6.36	6.71	7.08	7.49	+79

The 1973 survey rates shown above represent a 10.13% increase over the 1972 rates and reflect the rates DOT would authorize if not restricted by the 5.5% guideline. This is comparable to the increase authorized for Department of Defense in the same area.

We ask your prompt and earnest consideration of this request for a tandem relationship approval so the proper 1973 survey increase may be installed. If there are any further discussions that will help in arriving at your decision, we will be glad to arrange a meeting at any time. For your information, a copy of the new schedule reflecting the 5.5% increase is enclosed.

William H. Wesp
Acting Director of
Personnel and Training

Enclosure

SPECIAL WAGE SCHEDULE - MARITIME EMPLOYEES
GOVERNOR'S ISLAND, NEW YORK

EFFECTIVE DATE: July 8, 1973

	BASE 1/	OVERTIME 2/	HOLIDAY 3/	HOLIDAY 4/	SATURDAY/SUNDAY 5/
DECKHAND	5.07	7.61	10.14	12.68	7.61
OILER	5.21	7.82	10.42	13.03	7.82
ENGINEER	6.82	10.23	13.64	17.05	10.23
MASTER	7.08	10.62	14.16	17.70	10.62

1/ Base Rate - Hourly rate to be paid for first eight hours worked on each of the first five days occurring in an administrative work week, excluding Saturday and Sunday.

2/ Overtime Rate - Hourly rate to be paid for hours worked in excess of eight each day, or excess of forty hours in each administrative work week.

3/ Holiday Rate - Hourly rate to be paid for first eight hours worked on a designated holiday occurring during the regularly scheduled tour of duty.

4/ Holiday Rate - Hourly rate to be paid for hours worked on a designated holiday in excess of eight hours per day, or forty hours in an administrative work week.

5/ Saturday/Sunday Premium - Hourly rate to be paid for hours worked on Saturday and/or Sunday, occurring during the regularly scheduled tour of duty.

These rates are authorized for all regular full time and intermittent or part time personnel employed on the Governor's Island ferryboats in the ratings shown above.

A deckhand or oiler, working as a master or engineer, respectively, will be paid all pay and benefits accruing to the higher rating for all hours worked in the higher rating.

APPROVED DATE: July 26, 1973

William H. Wesp
Acting Deputy Director of
Personnel and Training

223a

AUG 28 1972

Mr. George S. Maharay
Director of Personnel
and Training
Office of the Secretary
Department of Transportation
Washington, D.C. 20590

Dear Mr. Maharay:

This is in further reply to your letter of June 30, 1972, requesting an exception to the 5.5 percent annual wage increase limit for licensed and unlicensed ferryboat employees of the U.S. Coast Guard at Governors Island, New York.

The Commission has carefully revieved your recommendation and has found that the three conditions outlined in Executive Order 11639 for exceptions to the 5.5 percent guidelines have not been met. These conditions are: (1) that a tandem relationship exists between a Federal pay schedule for an employee unit and pay increases granted in an activity in the private sector, (2) the Pay Board has permitted a pay increase for the activity in the private sector which is in excess of the guidelines, and (3) a comparable increase is essential to the continued operation of the Government service concerned.

The Pay Board has defined a tandem relationship as

> ... a well established and consistently maintained practice whereby the precise timing, amount, and nature of general increases in wages and salaries of a given appropriate employee unit have so followed those of another such unit of employees of the same employer or of other employers within a commonly recognized industry that a general increase, in the normal operation of the practice, would have been put into effect and have been applicable to work performed on or before November 13, 1971, but for the operation of the freeze.

11

The ferryboat employees described in your request do not appear to meet this condition.

Neither can we view the second condition as being met. The fact that pay increases for the marine industries in New York were placed into effect prior to the implementation of wage controls cannot be construed as exempting from those controls the Coast Guard ferryboat employees at Governors Island simply because of a claimed, or established, tandem relationship between the two groups. In the absence of compelling reasons to believe that the Pay Board would, if it had the opportunity, have approved the marine industry increases which were in excess of the 5.5 general guidelines we cannot consider the second condition as being met.

We also cannot view the third condition as being met. It does not appear from the information contained in your request that approval of the proposed increase would be essential to the continued operation of the Government service concerned.

Exceptions to the 5.5 percent guidelines are only made when all three of the conditions outlined in Executive Order 11639 are met. In the case of the ferryboat employees at Governors Island none of the conditions were met. Therefore the Commission has not approved as an exception to the 5.5 percent guideline the proposed adjustment for the licensed and unlicensed ferryboat employees of the Coast Guard at Governors Island, New York.

Sincerely yours,

/s/

Robert E. Hampton
Chairman

P72-520
PPW:Perez/bjb
8/23/72

12

OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

JUL 7 1972

Mr. George S. Maharay
Director of Personnel
and Training
Office of the Secretary
Department of Transportaion
Washington, D.C. 20590

Dear Mr. Maharay:

This is to acknowledge the receipt of your letter of June 30, 1972, concerning your submission for a tandem wage adjustment relating to DOT wage rate schedules for the civilian ferryboat work forces at Governors Island, New York.

As soon as it is possible for us to prepare a complete reply, we will write to you again.

Sincerely yours,

Raymond C. Weissenborn
Chief, Pay Policy Division

PP:ms 7/6/72
PPW
RR P72-520

227a

UNITED STATES GOVERNMENT U.S. CIVIL SERVICE COMMISSION

Memorandum

Subject: Request for exception to the 5.5 percent annual wage increase limit under the economic stabilization program

Date: AUG 24 1972

In Reply Refer To:

Your Reference:

From: Raymond Jacobson, Director
Bureau of Policies and Standards

Thru: Executive Director
To:

The Commission

Purpose

This memorandum recommends against approval of an exception to the 5.5 percent annual wage increase ceiling limitations as recommended by the Department of Transportation for licensed and unlicensed personnel employed on ferryboats operated by the U.S. Coast Guard at Governors Island, New York.

Background

The requirements and basis for approving exceptions to the 5.5 percent annual ceiling limitation on wage adjustments are discussed in the background paper attached to this memorandum.

Ba is for Transportation Recommendation

In accordance with provisions of FPM Letter No. 532-38, the Department of Transportation has recommended that the following Coast Guard ferryboat job category adjustments, covering 53 employees at Governors Island, New York, be approved effective March 5, 1972, as an exception to the 5.5 percent limit on wage increases:

Category	Percentage Increase
Deckhand	8.55
Oiler	8.54
Engineer	8.64
Master	8.64

14

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GOVERNMENT PRINTING OFFICE: 1964—O-729-462

CSC FORM
NOVEMBER

Transportation's recommendations for the exceptions to the 5.5 percent guidelines are based on:

a. Tandem relationship requirements

--The pay rates for the ferryboat job categories at Governors Island are based on the weighted averages of rates paid to similar positions of six commercial marine companies operating vessels in the New York Harbor area. This practice has been followed since 1968.

--The proposed wage increases would have gone into effect were it not for the existence of controls affecting Federal pay.

b. Increases permitted by Pay Board

--All of the private sector wage adjustments affecting the survey data used to arrive at the proposed rates were in effect prior to August 15, 1972.

c. Increases are essential to the continued operation of the Government service concerned

--Ferry service is operated to and from the Island of Manhattan (New York City) and Governors Island: ferry service is the only practical method for moving people, vehicles, and essential supplies to and from the Coast Guard Base located on Governors Island.

Conclusion

We believe that the Department of Transportation's recommendation for an exception to the 5.5 percent annual wage increase limit should not be approved on the basis that none of the three conditions outlined in E.O. 11639 have been met.

The Pay Board regulations define tandem relationship in terms of a well established and consistently maintained relationship between two units of employees within a commonly recognized industry. This relationship is such that the precise timing, amount, and nature of general increases in wages and salaries of the one unit is so followed by the second unit that the same general increase would have been effected, during normal operation of the practice, for the second unit. In the case at hand, the current practice for adjusting the ferryboat employees' pay is to conduct a survey of the marine industry in the New York port area to assure that the ferryboat rates are "related to and aligned with" local marine rates. This does not meet the definition of a tandem relationship.

We likewise do not consider the second condition as being met. The fact that the marine industry rates being considered as a basis for establishing the ferryboat employee rates were effected prior to the implementation of wage controls cannot be construed as exempting from those controls some other group of employees simply because of a claimed, or established, tandem relationship. While it cannot be ascertained that the Pay Board would, if given the opportunity, disapprove the pay increases for the marine industries in New York, neither can it be assumed that the Pay Board would have approved those increases. In the absence of compelling reasons to consider that the Pay Board would likely have approved those increases in the marine industries concerned we cannot view the second condition as being met.

We also feel the third condition has not been met. The operation concerned is by no means national in impact. It is indicated in the request that no recruitment or retention problems would be expected due to the already higher wage rates enjoyed by ferryboat employees as compared to other Federal wage employees at the installation. In short, it does not appear that granting the proposed increases in excess of the 5.5 percent limit would be essential to insure the continued operation of the Government service concerned.

Recommendation

That the proposed exceptions to the 5.5 percent ceiling covering licensed and unlicensed ferryboat employees of the U.S. Coast Guard, Governors Island, New York, be disapproved.

Action:

agree
B Rosen 8/24/72

Bernard Rosen
Executive Director

Action:

Approved
8/25/72

L. J. Andolsek
Commissioner

Staff rec. approved DCS

Jayne B. Spain
Vice Chairman 8/25/72

Approve 8/25

Robert E. Hampton
Chairman

Attachment

Background Paper for Exceptions To the 5.5 Percent Annual Wage Increase Limit

On January 11, 1972, President Nixon signed Executive Order 11639 providing for pay adjustments for Federal prevailing rate systems. The Executive Order directed the Civil Service Commission to issue instructions to executive agencies on fixing the rates of basic pay for blue collar employees. The Executive Order requires that the instructions limit pay adjustments for these workers to guidelines established by the Pay Board in the same way that adjustments are now circumscribed for Federal white collar workers by a 5.5 percent limit on increases.

Under provisions of the Executive Order exceptions to the 5.5 percent guidelines can be permitted if the following three conditions are met: (1) that a tandem relationship exists between a Federal pay schedule for an employee unit and pay increases granted in an activity in the private sector, (2) the Pay Board has permitted a pay increase for the activity in the private sector which is in excess of the guidelines, and (3) a comparable increase is essential to the continued operation of the Government service concerned. It is our understanding that an exception to the guidelines was intended to apply only in the most unusual circumstances.

The tandem relationship under the first provision is defined by the Pay Board as a well established and consistently maintained policy of following the pay practices in effect for a closely related group of employees. The employees to which related may be another unit of employees of the same employer. They also may be related to the practices of other employers when they are within the same commonly recognized industry (such as a two-digit Standard Industrial Classification category). The practices involved must be identical as to the timing and the amount and nature of general increases in wages, salaries and other compensation for a particular unit of employees. The tandem relationship must be so clear that it virtually guarantees that a general increase, in the normal operation of the practice, would have been put into effect and have been applicable to work performed were it not for the existence of controls affecting Federal pay.

Under the second provision the Pay Board must have permitted increases in excess of the established guidelines to the private sector activity to which the Federal activity has a tandem relationship. Increases which went into effect in the private sector activity prior to the establishment of controls under the Economic Stabilization Act do not qualify as being permitted by the Pay Board.

The first two conditions for exceptions to the guidelines -- tandem relationship and increases being permitted by the Pay Board -- are clear cut and fairly easy to apply.

The third condition -- a comparable increase is essential to the continued operation of the Government service concerned -- presents some problems as to how this condition should be interpreted. Basically under this condition we think it should be shown that the recommended increases are necessary to attract and retain employees essential to the efficient operation of the Government service concerned. We feel that determinations on this third condition should be handled on a case basis and should be based on any two of the following factors.

1. National significance of mission of activity involved

   Under this factor we would consider the importance or impact of the mission of the activity involved to the Nation. This would generally include activities that provide a product or a service that could not be obtained elsewhere that is critical to the well being of the Nation.

2. Recruitment and retention problems of activity

   Under this factor the proposed increase would have to be necessary so that the involved activity becomes more competitive in his wage rate in order to attract or retain employees essential to the efficient operation of the activity. In this regard it would have to be demonstrated that current or expected vacancies have not been filled as a result of recruiting efforts of the activity.

3. Rationale for exception made by office submitting request

   Under this factor we would consider any additional information pointing out unusual circumstances in the case involved. This would include such matters as gains in productivity, amounts of increases given in previous years, union agreements, types of employees covered by the proposed wage adjustment, etc. In other words any unusual information not covered by the other factors would be considered.

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OFFICE OF THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

June 30,1972

Mr. Raymond Jacobson
Director, Bureau of Policies & Standards
U. S. Civil Service Commission
1900 E Street, N. W.
Washington, D. C. 20415

Dear Mr. Jacobson:

In accordance with the provisions of FPM Letter 532-27 (2-2-72), the following is submitted for your consideration as a tandem wage adjustment proposal.

Specifically, this proposal relates to the DOT wage rate schedule authorized for licensed and unlicensed personnel employed on ferryboats operated by the U. S. Coast Guard at Governors Island, New York. This Coast Guard Base is located on an island situated in New York Harbor. Ferry service is operated to and from the Island of Manhattan (New York City) and Governors Island: ferry service is the only practical method for moving people, vehicles, and essential supplies to and from the Coast Guard Base located on Governors Island.

The Governors Island Base is an important military installation insofar as Coast Guard operations are concerned. In addition to the actual Base operation, several important activities are headquartered on and operate from Governors Island. These are: (1) Headquarters, Eastern Area; (2) Headquarters. Third Coast Guard District; (3) Captain of the New York Port and (4) the U. S. Coast Guard Training Center. The Base includes a typical operating complement whose function it is to provide normal housekeeping and maintenance functions to assure operation of the facility. The personnel complement includes approximately 600 civilian employees and approximately 3,000 military who are stationed on this Base.

The civilian ferryboat work force with which we are concerned numbers about forty unlicensed and thirteen licensed personnel. Ferryboats operate twenty-four hours a day, seven days each week. Turnover among these ferryboat employees is not high and occurs most frequently among unlicensed personnel. The Base experiences very little difficulty filling vacancies because other wage grade employees on the Base eagerly seek these vacancies; the Ferryboat wage schedule provides

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higher wage rates than does the CFWS New York, New York wage schedule for most nonsupervisory wage grades.

Prior to the Coast Guard assuming control of Governors Island, New York in 1966, the Army Department operated the installation for many years. The Army related the Governors Island ferry operation to the commercial ferry operating between 69th Street, Brooklyn and Staten Island. As a consequence, the 69th Street ferry pay structure was applied to the Governors Island ferry personnel; as wage adjustments occurred for 69th Street ferry employees, these adjustments were adopted for the Governors Island ferry employees. In 1966, the Treasury Department authorized a wage adjustment for the Coast Guard Governors Island ferry employees based upon an adjustment provided for in the labor agreement which had been in effect at the now defunct 69th Street ferry. Thus, the Treasury Department followed the long accepted Army Department practice.

The first wage adjustment given to these ferryboat employees after they became DOT employees was effective in August 1968. At this time it was concluded that a wage survey, of marine pay rates in the New York port, provided the only reasonable basis for establishing pay rates for the Governors Island ferryboat employees since the old 69th Street ferry reference point no longer existed. Our predecessors on Governors Island were satisfied to consider the former 69th Street operation sufficiently similar for pay fixing purposes so that the arrangement was reasonably satisfactory both to management and the employees. From our surveys conducted in the New York port we have established that all other marine operations in the port are significantly different from the Governors Island ferry operation in some one or more major respect so that a direct parallel (similar to the old 69th ferry relationship) cannot be found; therefore, the total marine rate picture in the New York port is now sampled to assure that our ferryboat rates are related to and aligned with local marine pay rates.

In February and March 1972 our second wage survey was conducted in the New York port area. The start of this survey was stimulated as a consequence of CSC Bulletin 532-15, Subject: Cancellation of Deferment of Wage Increases, dated January 12, 1972. Based on these 1972 survey findings, a 5.5% wage increase for theferry employees was authorized on March 5, 1972. A comparison of the new rates authorized on March 5, 1972 in contrast to the rates our survey conclusions support is shown as follows:

8.6%

	1968 Rates	1972 Survey		5.5% Approved 3-5-72
Deckhand	4.56	4.95	8.55	4.81
Oiler	4.68	5.08	8.54	4.94
Engineer	6.13	6.66	8.64	6.47
Master	6.36	6.91	8.64	6.71

As outlined in par. 2.g. of the Attachment to FPM Letter 532-27, it is requested that an exception to the 5.5% increase formula be granted so that the full wage survey increase, shown in the table included in the preceding paragraph, may be given to the Governors Island ferryboat employees. It is believed that the highly specialized industry and activity represented in this case matches the intent of the tandem increase concept outlined in FPM Letter 532-27. Most of the local maritime activities in the New York port are operating with labor agreements in effect prior to August 15, 1971. These agreements provided for a series of wage increases, the last of which is a 10% increase scheduled to become effective during1972. At the time our survey was conducted there was some uncertainty in the locality as to whether the 1972 adjustment would req ire Pay Board review and at this time we do not have any information on the outcome of this matter. However, all of the local adjustments affecting the survey data used to arrive at the rates we are asking be approved is influenced by labor agreements in effect prior to August 15, 1971.

If any additional information is needed by your staff, please do not hesitate to contact my office.

Sincerely,

George S. Maharay
Director of Personnel
and Training

MAY 1 1972

Mr. Joseph O'Hare
President, Local 333
United Marine Division
NMU AFL-CIO
17 Battery Place
New York, New York 10004

Dear Mr. O'Hare:

Secretary Volpe has referred your letter dated March 21 to my office for reply.

We have been working with the U. S. Coast Guard for the last several months trying to establish a workable pay adjustment policy for Federal civilian personnel employed on the Governors Island ferryboats.

The matter of pay for these employees is, to say the least, complicated as your letter seems to indicate you recognize. Moreover, all Federal marine employees were brought under the Coordinated Federal Wage System several years ago but were then temporarily excluded or "set aside" from that system until such time as the National Wage Policy Committee decides how marine employees will eventually be treated under the Coordinated Federal Wage System. This means that during the interim period (now four years), the employing Federal Departments continue to be responsible for establishing and maintaining appropriate pay systems for employees not yet brought under the basic coordinated wage system. This fact bears directly on the Governors Island situation.

Your letter alludes to the Classification Act of 1949. Authority given the heads of Federal Departments and Agencies to fix pay for marine employees is derived from a specific provision in that Act (Title 5, U.S.C. 5102(c)(8)) which serves to exclude officers and members of crews of vessels from the Classification Act system. It is further provided by statute (5 USC 5343a) that pay for such officers and crew members is to be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with the prevailing rates and practices in the marine industry.

For practical purposes, the Governors Island Ferryboat employees have been considered marine employees by the two Federal Departments who

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operated Governors Island prior to the present Department of Transportation, i.e., the Departments of the Army and Treasury. The Department of Transportation intends to continue the practice of treating Governors Island ferryboat personnel as marine employees.

Basically two techniques are available to Federal Departments when fixing wage rates administratively for marine employees (assuming the rates are not established by law). First, where it can be determined that an identical, or virtually identical, activity is being operated by private industry in the same area, it is possible to adopt or parallel those industry rates for payment to Federal employees. If on the other hand there is no exactly parallel situation, or, if there exists a number of employers who can be considered representative of the same occupation or industry in the area, then it is customary to conduct surveys of wages paid in that industry; such information then provides a basis for establishing pay rates or pay rate schedules for the Federal employees affected.

One of the steps we have taken is to review with the Department of Defense Wage Fixing Authority the basis used to establish wage rates for the Governors Island ferryboat personnel while that activity was operated by the Army Department. We find that within the Department of Defense it was concluded that the old 69th Street ferry (mentioned in your letter) was considered sufficiently like the Governors Island ferry operation that the 69th Street ferry pay structure was adopted for the Governors Island ferry personnel. As wage adjustments occurred for 69th Street ferry employees, the Department of Defense Wage Fixing Authority adjusted the Governors Island ferryboat wage schedule to reflect 69th Street ferry pay adjustments. This was a rather routine process which enabled that Department to conveniently adjust wages administratively to achieve the results anticipated by the section of the law cited earlier. The Army-Air Force Wage Board was the administrative agency within the Defense Department responsible for establishing such wage schedules at that point in history. The present Department of Defense Wage Fixing Authority is the successor organization empowered with the same kind of wage setting authority for all Defense activities and came into being as a consequence of the new Coordinated Federal Wage System being imposed on the entire Federal service.

The 1966 wage adjustment for Governors Island ferryboat personnel, mentioned at the top of the second page of your letter, occurred shortly after the U. S. Coast Guard acquired the Governors Island facility from the Army Department. This wage adjustment was granted by the Treasury Department and was based upon an adjustment included in the labor agreement which had been honored by the former 69th Street ferry.

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It was subsequent to this time that the Coast Guard was transferred into the new Department of Transportation. It is now our responsibility to establish wage rates for these employees. In reviewing the history of this activity we find that both predecessor Departments were [illegible] to use the now defunct 69th Street ferry as the suitable basis for setting Governors Island ferry pay rates. We are also advised that neither of the predecessor Departments consider that they were involved in negotiations, or agreements, or formal collective bargaining arrangements of any sort concerning the setting of wages for their Governors Island ferryboat personnel.

The first wage adjustment given these ferryboat employees after they became DOT employees was effective in August 1968. At this point in time the problem facing the Coast Guard centered on the fact a new basis had to be found to permit establishing wage rates. It was then decided to conduct a wage survey of marine wage rates in the New York port. An attempt was made at that time to conduct a survey of wage rates paid by companies in the port who employed Deckhands, Oilers, Engineers, and Masters. You may recall that the Governors Island ferry employees received two increases as a consequence of this effort. First, an increase was given in February 1969, retroactive to 25 August 1968: a second adjustment was given later in December 1969, also retroactive to 25 August 1968. In total, this August 1968 adjustment provided approximately a 25% increase for the ferryboat employees. The 25 August 1968 effective date came about as a consequence of the wage survey end-date; i.e. the 45 day provision in the law relating to conducting wage surveys was applied to the August 1968 wage adjustment.

More recently, on 5 March 1972, a 5.5% wage increase was given to the Governors Island ferryboat personnel. This again is based upon wage increase information obtained through a survey of representative employers of similar marine personnel in the New York port. As stated earlier, our predecessors on Governors Island were satisfied to consider the former 69th Street ferry operation sufficiently similar to the Governors Island ferry operation for pay setting purposes. From our surveys conducted in the New York port, we are convinced that all other marine operations in the port are sufficiently different from the Governors Island ferry in some respect so that a direct parallel (similar to the 69th Street operation) cannot be reasonably established. Therefore, the only remaining way to establish a prevailing industry rate relationship is by use of the wage survey technique; this is simply an attempt to obtain rates paid by selected employers in the area for similar occupations. The rate data so obtained then provides a basis for establishing pay rates for our Federal employees.

The 5.5% wage increase granted on 5 March 1972 is the maximum increase (pay adjustment) that may be given Federal employees under current

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economic stabilization program rules. The actual wage freeze affecting Federal employees was terminated last January. A special provision is included in the existing pay increase rules concerning tandem pay relationships between a government activity and a specialized industry. Based on the wage data obtained during the recent survey, we feel that under the present rules applied to Federal wage type employees this Department could go to the Civil Service Commission and request approval for an additional increase based on the survey findings. We feel the Governors Island case reflects what was intended in that provision and the Department now plans to request a favorable ruling on the Governors Island case from the U. S. Civil Service Commission.

Your letter speaks to inequities about salaries paid to crew members on the Governors Island ferries contrasted to the New York City ferries. First, it is important to understand that by law, Federal employees normally work a 40-hour week. The Governors Island ferry personnel also are paid time and one half for work in excess of eight hours in one day, or, in excess of forty hours in one week. At the time we contacted New York City during our recent wage survey, we found the basic hourly pay rate for a Master to be $7.065 per hour. The normal thirty-two hour work week provides an employee with 30 hours at $7.065 and two hours at $7.94. An annual salary, based on a normal thirty-two hour work week, would produce approximately $11,732 per year. Essentially this same point applies to the remaining three salaries you cite; therefore, we interpret the New York City salaries cited as gross earnings including overtime beyond thirty-two hours per week, and possibly reflect individual earnings for selected New York City employees, or, these gross salaries could reflect a pay adjustment given the New York City employees subsequent to our contacts made during the wage survey. If this latter situation is true, these recent adjustments will be reflected in the next wage survey. In contrast, the Governors Island annual salaries you report are correctly computed based on straight time hourly rates for a normal 40 hour work weeks (2080 hours).

As a consequence of our survey, we found considerable variation in the work week pattern followed in local industry. New York City is the only employer reporting a normal thirty-two hour work week. Several companies use a forty hour work week (similar to the Federal Government); several companies use a twelve hour work day (two six hour shifts) with work days scheduled in variety of ways such as, three days on and two days off; seven days on and seven days off, etc. Employees are apparently given some latitude about arranging their work weeks. Characteristically, employers in the area pay time and a half for overtime as we do at Governors Island. The time for applying the overtime rate varies with employer.

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An important aspect of the wage schedule matter which we must consider has to do with the public interest phase of setting wages for employees at Governors Island. When the ferry employees wage rates were related to a single employer in the area (69th Street ferry) it was mechanically simple to adopt that single employer's adjustments. Since there is no adequate substitute in the area for the former single employer reference point, we are in a position of needing to look at the entire marine labor market in the New York port to fix wages. One of the characteristics of wage adjustments given in this labor market is that the adjustments occur at different times, in different ways and in different amounts. A wage survey, conducted periodically will enable us to get a fix on the local wage picture at the point in time when the survey is actually conducted. Surveys of the New York port are considered adequate for wage setting purposes. Consequently, we plan to conduct a survey annually and use the survey data as the basis for adjusting the Governors Island ferryboat pay rates each year. This then will assure the ferryboat personnel that they will be given the same annual pay rate review consideration that is afforded all other Federal employees working on Governors Island.

It is recognized that your union has achieved an exclusive recognition under Executive Order 11491 to represent the ferryboat employees at Governors Island. Also, it is understood that an agreement has not yet been negotiated to implement this recognition. Should you choose to initiate these negotiations at some later date, however, we do want to confirm that we do not consider the establishment of wage rates for ferryboat personnel to be a negotiable matter.

In conclusion, I think most of the factual information furnished in this letter is consistent with the information conveyed to you in your meeting with Coast Guard representatives on February 29, 1972. The only important new development is the fact we are going to approach the Civil Service Commission with a request that they approve an additional tandem increase for the Governors Island ferryboat rate schedule. You and the ferryboat personnel will of course be apprised of our success or failure in this effort.

Sincerely,

(signed) William S. Heffelfinger

WHWesp/jh 64122 TAD-16 4/28/72
cc: TAD-1 TAD-10 TAD-16 TAD-161

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UNITED MARINE DIVISION
N.M.U., A.F.L.—C.I.O.
Local 333
17 BATTERY PLACE • NEW YORK, N. Y. 10004
BOwling Green 9-7151

26 FRONT STREET
Waterford, New York
Tel. 518-237-9748

Make all checks and money orders payable to Treasurer

5124

March 21, 1972

John A. Volpe,
Secretary of Transportation
800 Independence Avenue, S.W.
Washington, D. C. 20590

Dear Mr. Secretary:

We represent all of the crew members employed on the Ferry Boats used to service Governor's Island in the Port of New York.

This letter is being written to you because we feel that our members are being unjustly treated by the Coast Guard in charge of civilian personnel.

We realize that this is a rather strong accusation to made and have hesitated for some time to complain, but we think that when we explain to you the history of our relationship with the U. S. Government in the representation of these crew members as contrasted with the treatment which we are presently receiving, no other conclusion would seem logical.

We have represented these crew members since 1956, at which time they were under the U. S. Army. It was agreed at that time that these civilian crew members would be paid wages consistent with the wages paid for similar employment in the Port of New York. In other words, payment would be on a prevailing rate basis. Since we also represented the crew members of Ferry Boats of the City of New York (those ferryboats which travel between New York and Staten Island) and those crew members employed by private enterprise on the 69th Street Ferry (those ferryboats at that time shuttled between Brooklyn and Staten Island) the prevailing rates were always essentially determinable and the Army adherred to its agree-

ment by adjusting the wages of the employees on the Govenor's Island Ferry within a reasonable time after we submitted each new contract. This relationship continued until the Coast Guard took over the operation in 1966. At that time we were operating under a three-year wage agreement (from 1964 to 1967) and the Coast Guard paid the final increment in accordance with the army agreement.

In 1967 when ferryboat crew members in this area received an increase from the City of New York, the Coast Guard started a series of delaying tactics which can only be construed as unreasonable. They stalled until the Summer of 1968 and finally we were able to negotiate the prevailing rate. However, the Coast Guard refused to pay retroactivity to July of 1967, so that in effect, their stalling tactics resulted in our members going without their justified increase for approximately 14 months.

In early 1970 we negotiated a 40% increase over thirty-nine months for maritime workers employed by private industry in the Port of New York.

In March of 1971 (following settlement of the new contract for employees on the New York City Ferryboats) we requested a meeting to negotiate the new wage agreement in accordance with the established past practiced policy of prevailing rates. This letter was promptly acknowledged with a promise of an early meeting. Notwithstanding our diligent continual requests for an early date for the meeting we were unsuccessfull in securing such a meeting because of the stalling of the Coast Guard until February, 1972. During that period of time the Coast Guard personnel with whom we splke placed all of the blame for the delay on your department.

In February of 1972 we finally met with the Coast Guard at which time we were told that because of the current wage freeze they were limited to a 5.5% increase, and if we wanted more we had to go to a higher authority.

We were also advised that the Coast Guard is without authority to negotiate or collectively bargain. Since the Coast Guard is without authority, it is obvious that if the

civilian employees under the jurisdiction of the Coast Guard are to have the right to be represented by a Union, that right is effectively abrogated by requiring us to deal with an agency who is not intrusted with authority.

The purpose of this letter is to go to that higher authority.

Our counsel informs us that under the Congressional "Classification Act of 1949" prevailing rates were established for maritime employees. This is the agreement which was carried forward by the Army for so many years. Our counsel also informs us that even under the present wage price freeze an exception is where there is a tandem relationship between a Federal pay schedule for a specialized employee unit (as here) and pay increases granted in a specialized activity in the private sector.

The inequities to our members can clearly be seen when it is realized that the crew members of City Ferryboats whose vessels travel parallel and in some cases whose vessels are smaller than the Coast Guard Ferryboats have received a 30% increase since July 1, 1970 and are receiving the following annual salaries:

	New York City Ferryboat Vessels 32 hr. week
Capt.	$15,808.00
Eng.	$15,299.00
Oiler	$11,394.00
Deckhand	$10,935.00

In September of this year they will receive the final 10% bringing their salaries to the following figures:

Capt.	$17,388.00
Eng.	$16,827.00
Oiler	$12,531.00
Deckhand	$12,038.00

By contrast the Coast Guard is now paying the following below Union scale, salaries which includes the 5.5% increase:

-Coast Guard Vessels-
40 hr. week

Capt.	$13,957.00
Eng.	$13,458.00
Oiler	$10,275.00
Deckhand	$10,005.00

We wish to emphasize that Coast Guard employees are working one more day each week for far less money than City Ferry employees receive for a four day week.

Therefore, Mr. Secretary, we ask that this obvious inconsistency which is unjustified under the law and arose only after 1967 be corrected forwith.

In conclusion, we wish to emphasize that the Port of New York is a Union Port. This union representing a majority of the crew members of the boats employed in this Port has taken great pride in its patriotism. We have never had a strike against any Federal agency and even when our strikes have tied up this Port, we have always had laison between the Department of Defense and other Federal agencies to insure that no aspect of governmental service was ever interrupted We do not claim credit for this, nor are we asking for favors because of it, but we certainly feel that our members are entitled to those provisions of the law which were passed for their protection and benefit.

Yours truly,

UNITED MARINE DIVISION
LOCAL 333

Joseph O'Hare

JOSEPH O'HARE
PRESIDENT

JO/lac

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CC: Rear Admiral,

PLAINTIFF'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
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PLAINTIFFS' EXHIBIT 2

MEMO RE: TREASURY DEPARTMENT WAGE BOARD

DECISION Dated: March 31, 1966

TREASURY DEPARTMENT
WASHINGTON 25, D.C.

TREASURY DEPARTMENT WAGE BOARD DECISION

SUBJECT: Rates of Pay for Wage Board Employees of the U. S. Coast Guard New York Base, Governors Island, New York

Attached are two proposals from the Coast Guard that concern the rates of pay for wage board employees who will man the U. S. Coast Guard New York Base, Governors Island, New York when Coast Guard takes over Fort Jay lands and facilities from the Department of the Army effective June 1 and June 30, 1966.

The first proposal of December 9, 1965, revised March 13, 1966, (Exhibit I) recommends saving the present Army rates of pay of 27 employees who will be transferred from the Army to the Coast Guard without a break in service and assigned to the 9 job classifications listed in the attachment to Exhibit I. These job classifications have been established by Coast Guard under delegated authority. The employees would otherwise suffer a loss in pay due to differences in the Army wage system and the Navy wage system under which they will be paid by the Coast Guard. The saved rates will cost the Coast Guard $3,328.00 per annum initially but they will be eliminated by wage adjustments in one to two years.

The second proposal of December 20, 1965, supplemented by memorandum of March 8, 1966 (Exhibit II) recommends establishment of a MARITIME SERVICE Single Rate Schedule for ferryboat employees that Coast Guard will take over from the Army on June 1. The Department of the Navy has no wage schedule for ferryboat employees to which Coast Guard can compare for purposes of setting up a Maritime Schedule under delegated authority. Therefore, in the absence of a Navy schedule, Coast Guard proposes to establish a MARITIME SERVICE Single Rate Schedule similar to Army's current Single Rate Ferryboat Wage Schedule for the New York Harbor Area (Exhibit III). Coast Guard, with the advice of the Navy, proposes to use (1) the Army's current ferryboat rates and add to them the July 1, 1965 15¢ per hour increase to officers and the 10¢ per hour increase to crewmen

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of the Staten Island Ferry operated by the City of New York (See Exhibit IV - Memo of Wages and Conditions covering officers and crewmen employed by the City of New York with Local 333, United Marine Division, National Maritime Union, for the period July 1, 1964 to June 30, 1967) and (2) adjust these rates in the future by the same cents per hour increases given to Staten Island Ferry employees.

(The 69th Street Ferry, to which the Army compared for purposes of fixing and adjusting their ferryboat rates, has gone out of business and the Army has given no increases to its employees since September 1, 1964. The Staten Island Ferry is now the only passenger ferry service in the New York Harbor Area.) As part of this proposal, Coast Guard recommends continuance of the overtime and holiday rates in the current Army Ferryboat Schedule. These rates are included in the proposed wage schedule attached to Exhibit II.

The Wage Board staff found:

(1) The proposal to save the existing wage rates of Army personnel who will transfer to the Coast Guard without a break in service to perform the same kind of work to be in the interest of economy and efficiency since it will eliminate recruitment difficulties, promote greater productivity and encourage employee morale;

(2) Employees who will be paid on the proposed Coast Guard MARITIME SERVICE Single Rate Schedule are excluded from the Classification Act of 1949, as amended, by Section 202(8) of that Act, which provides:

> "(8) officers and members of crews of vessels, whose compensation shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry;"

The current prevailing rates in the New York Harbor Area are the City of New York Staten Island Ferry rates. However, Coast Guard is not recommending Staten Island Ferry rates because they are based on operating ferryboats which are larger in terms of tonnage and distance travelled than the Governors Island Ferry (and the comparable 69th Street Ferry) and therefore they are higher, following maritime industry practice, than current Army rates.

Therefore, the proposal to (1) adopt the Army's current basic rates for ferryboat employees and add to them the July 1, 1965 increases to Staten Island Ferry employees, and (2) adjust these basic rates in the future by the cents per hour increases to Staten Island Ferry employees appears to be reasonable and sound.

Proposed overtime and holiday rates for ferryboat employees are the overtime and holiday rates in the current Army ferryboat schedule, except Coast Guard has added the "two hour minimum at double time on a holiday" which applies to other wage board employees in Treasury. The Army's overtime and holiday rates are based on 69th Street Ferry contract rates, which were the prevailing rates for a comparable ferryboat operation before this company went out of business. There is no question about the proposed overtime rate since it is the current prevailing rate in the Staten Island Ferry contract. But, there is a difference between the proposed holiday rates and the prevailing holiday rates in the Staten Island Ferry contract. The latter are higher and Coast Guard is not recommending them. However, this is justifiable for the same reasons that Coast Guard is not recommending adoption of the prevailing basic wage rates in the Staten Island Ferry contract.

It is the decision of the Wage Board that:

(1) No employee who transfers from the Department of the Army to the Coast Guard without a break in service and is assigned to a job classification listed in the attachment to Exhibit I shall suffer a reduction in his basic wage rate in effect immediately prior to his transfer, as long as he remains in the same job, and he shall continue to receive his current basic rate until such time as he is entitled to a higher rate by reason of the re-evaluation of his job, or promotion, or a wage schedule adjustment.

(2) The basic rates and overtime and holiday rates shown in the proposed Coast Guard MARITIME SERVICE Single Rate Schedule for ferryboat employees at the New York Base, Governors Island (attached to Exhibit II) shall be established. These basic rates shall be adjusted in the future by the same cents per hour increases in basic rates for comparable officer and crewman classifications in the City of New York Staten Island Ferry schedule. Any changes in overtime and holiday rates shall be recommended to the Treasury Wage Board for prior approval.

_____, Chairman

_____, Member

_____, Member

Approved: MAR 31 1966

_____

Assistant Secretary for Administration

PLAINTIFF'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
3

PLAINTIFFS' EXHIBIT 3

LETTER DATED JUNE 13, 1969

JAMES J. DELANEY
9TH DISTRICT, NEW YORK

251a

COMMITTEE ON RULES

Congress of the United States
House of Representatives
Washington, D.C.

June 13, 1969

Mr. Ronald H. Whelan
35-20 Leverich Street, Apt. B230
Jackson Heights
New York 11372

Dear Mr. Whelan:

The enclosed communication was received today from the Coast Guard relative to wage schedules for ferryboat personnel, about which you wrote me.

This is self-explanatory, and you will note especially the marked portions. I hope their determination of a wage formula will alleviate the deficiencies you presented.

With kind regards, I am

Sincerely yours,

James J. Delaney

James J. Delaney, M.C.

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

Address reply to:
COMMANDANT
U.S. COAST GUARD (RB-2)
WASHINGTON, D.C.
20591

5730
11 JUN 1969

Honorable James J. Delaney
House of Representatives
Washington, D. C. 20515

Dear Mr. Delaney:

Your letter dated 16 May 1969, concerning Mr. Ronald H. Whelan, Jackson Heights, New York, has been forwarded to this office for further reply.

Title 5, U. S. Code 5342, provides that the pay of officers and members of crews of vessels shall be fixed and adjusted from time to time as nearly as is consistent with public interest in accordance with prevailing rates and practices in the maritime industry. Since the rates being paid to Governors Island Ferry personnel are greater than the prevailing rates of the total maritime industry in the New York Harbor, the Coast Guard adopted a policy to adjust its rates by the same cents per hour increases in basic rates for comparable officer and crew classifications in the city of New York Staten Island Ferry schedule. This was done effective 3 July 1966 and again 28 August 1968.

The recent study of wages paid in a representative segment of the Marine Transportation industry in the New York Harbor revealed that while the ferry operations in the harbor are comparable in mission and types of craft, they are not strictly comparable in terms of functions and responsibilities of personnel. Accordingly, we will determine a wage formula within the next 90 days to establish consistency in wage rates and practices between the Governors Island Ferry operation and the maritime industry.

You may assure Mr. Whelan that we are attempting to alleviate any wage deficiencies that may exist in our present wage schedule for ferryboat personnel.

It is hoped that this information will be helpful in answering the correspondence from Mr. Whelan. It has been a pleasure to be of service to you.

Sincerely yours,

W. J. SMITH
Admiral, U. S. Coast Guard
Commandant

PLAINTIFF'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
4 ID

PLAINTIFFS' EXHIBIT 4

Letter Dtaed March 26,1969

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

Address reply to:
COMMANDANT
U.S. COAST GUARD
WASHINGTON, D.C.
20591

(PG-2)

5730
26 MAR 1969

Honorable Henry Helstoski
House of Representatives
Washington, D. C. 20515

Dear Mr. Helstoski:

This is in reply to your letter of 20 March 1969 transmitting a letter from Mr. Joseph Kuzy covering his dissatisfaction with wages paid to

Title 5, U.S. Code 5342, provides that the pay of officers and members of crews of vessels shall be fixed and adjusted from time to time as nearly as is consistent with public interest in accordance with prevailing rates and practices in the maritime industry. Since the rates being paid to Governors Island Ferry personnel are greater than the prevailing rates of the total maritime industry in the New York Harbor, the Coast Guard adopted a policy to adjust its rates by the same cents per hour increases in basic rates for comparable officer and crew classifications in the city of New York Staten Island Ferry schedule. This was done effective 3 July 1966 and again 28 August 1968.

A study of the wages paid in a representative segment of the Marine Transportation industry in the New York Harbor revealed that while the ferry operations in the harbor are comparable in mission and types of craft, they are not strictly comparable in terms of functions and responsibilities of personnel. Accordingly, we are currently conducting a study for the purpose of developing a wage formula which is as consistent as practicable with prevailing rates and practices in the maritime industry.

You may assure Mr. Kuzy that we are attempting to alleviate any wage deficiencies that may exist in our present wage schedule for ferryboat personnel.

It is hoped that this information will be helpful in answering the correspondence from Mr. Kuzy. It has been a pleasure to be of service to you.

Sincerely yours,

A. A. HECKMAN
[illegible] Coast Guard
Assistant Commandant for International Affairs

PLAINTIFF'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
5

PLAINTIFFS' EXHIBIT 5 -

Charts- Wage Claim - 7-67 to 2-1-75

WAGE CLAIM
7/67 to 2/1/75

MASTERS, GOVERNORS / S. FERRIES
calculated on 2080 annual hrs, 173 monthly hrs, using hourly rates

Period	Rate Recieved	Rate Claimed	Deficit/hr	Amt. Claimed (for period)	SUD end-of-period totals
7/67 - 8/68 14 mos. 2422 hrs.	5.09	6.36	1.27	3075.94	3075.94
8/68 - 7/70 23 mos.	6.36	6.36	none	none	3075.94
7/70 - 9/71 14 mos. 2422 hrs.	6.36	8.46	2.10	5086.20	8162.14
9/71 - 3/72 * 6 mos. 1038 hrs.	6.36	9.31	2.95	3062.10	11224.24
3/72 - 9/72 * 6 mos. 1038 hrs.	6.71	9.31	2.60	2698.80	13923.04
9/72 - 7/73 10 mos. 1730 hrs.	6.71	10.24	3.53	6106.90	20029.94
7/73 - 4/1/74 9 mos 1557 hrs.	7.08	10.24	3.16	4920.12	24950.06
4/74 - 5/74 * 1 mo 173 hrs	7.47	10.24	2.77	479.21	25429.27
5/74 - 2/1/75 * 9 mos 1557 hrs.	7.92	10.24	2.32	3612.24	29041.51

* dates rounded off, nearest month

TOTAL, MASTERS 29041.51

plus individual holiday & overtime accruals

WAGE CLAIM

257a

7/67 to 2/1/75

ENGINEERS, GOVERNORS ISLAND FERRIES

calculated on 2080 annual hours, 173 monthly hours, using hourly rates

Period	Rate Recieved	Rate Claimed	Deficit Per hour	Amt. (for period) Claimed	End-of-period totals
7/67 - 8/68 14 mos. 2422 hrs.	4.91	6.13	1.22	2954.84	2954.84
8/68 - 7/70 23 mos.	6.13	6.13	none	none	2954.84
7/70 - 9/71 14 mos. 2422 hrs.	6.13	8.19	2.06	4989.32	7944.16
9/71 - 3/72 * 6 mos 1038 hrs.	6.13	9.01	2.88	2989.44	10933.60
* 3/72 - 9/72 6 mos. 1038 hrs.	6.47	9.01	2.54	2636.52	13570.12
9/72 - 7/73 10 mos. 1730 hrs.	6.47	9.91	2.44	4221.20	17791.32
7/73 - 4/74 9 mos. 1557 hrs.	6.82	9.91	3.09	4811.13	22602.45
4/1/74 - 5/12/74 * 1 mo. 173 hrs	7.20	9.91	2.71	468.83	23071.28
5/12/74 - 2/1/75 * 9 mos. 1557 hrs	7.64	9.91	2.27	3534.39	26605.67

* dates rounded off, nearest month

TOTAL, ENGINEER 26605.67
plus individual holiday & overtime accruals

258a

WAGE CLAIM
7/67 to 2/1/75

OILERS, GOVERNORS ISLAND FERRIES

calculated on 2080 annual hrs., 173 monthly hrs., using hourly rates

Period	Rate Recieved	Rate Claimed	Deficit per hour	Amt. Claimed for Period	End-of-period totals
7/67 - 8/68 14 mos. 2422 hrs	3.74	4.68	.94	2276.68	2276.68
8/68 - 7/70 23 mos.	4.68	4.68	none	none	2276.68
7/70 - 9/71 14 mos. 2422 hrs.	4.68	6.10	1.42	3439.24	5715.92
* 9/71 - 3/72 6 mos 1038 hrs.	4.68	6.71	2.03	2107.14	7823.06
* 3/72 - 9/72 6 mos. 1038 hrs.	4.91	6.71	1.80	1868.40	9691.46
9/72 - 7/73 10 mos. 1730 hrs.	4.91	7.38	2.47	4273.10	13964.56
7/73 - 4/1/74 9 mos. 1557 hrs.	5.15	7.38	2.23	3472.11	17436.67
4/1/74 - 5/1/74 * 1 mo. 173 hrs.	5.50	7.38	1.88	325.24	17761.91
5/1/74 - 2/1/75 * 9 mos. 1557 hrs.	5.83	7.38	1.55	2413.35	20175.26

* dates rounded off to nearest month

TOTAL, OILER 20175.26
plus individual over time & holiday accruals

WAGE CLAIM
7/67 to 2/1/75

DECK HANDS, GOVERNORS IS. FERRIES

Calculated on 2080 annual hrs., 173 monthly hrs, using hourly rates

Period	Rate Recieved	Rate Claimed	Deficit per hour	Amt. (for period) Claimed	Sub totals end-of-period
7/67 - 8/68 14 mos. 2422 hrs.	3.74	4.68	.94	2276.68	2276.68
8/68 - 7/70 23 mos.	4.56	4.56	none	none	2276.68
7/70 - 9/71 14 mos. 2422 hrs	4.56	5.86	1.30	3148.60	5425.28
* 9/71 - 3/72 6 mos. 1038 hrs	4.56	6.44	1.88	1951.44	7376.72
* 3/72 - 9/72 6 mos. 1038 hrs.	4.81	6.44	1.63	1691.94	9068.66
9/72 - 7/73 10 mos. 1730 hrs.	4.81	7.09	2.28	3944.40	13013.06
7/73 - 4/1/74 9 mos. 1557 hrs	5.07	7.09	2.02	3494.60	16507.66
4/74 - 5/74 * 1 mo. 173 hrs	5.35	7.09	1.74	301.02	16808.68
5/74 - 2/1/75 9 mos. 1557 hrs	5.68	7.09	1.41	2195.37	19004.05

* dates rounded off, nearest month

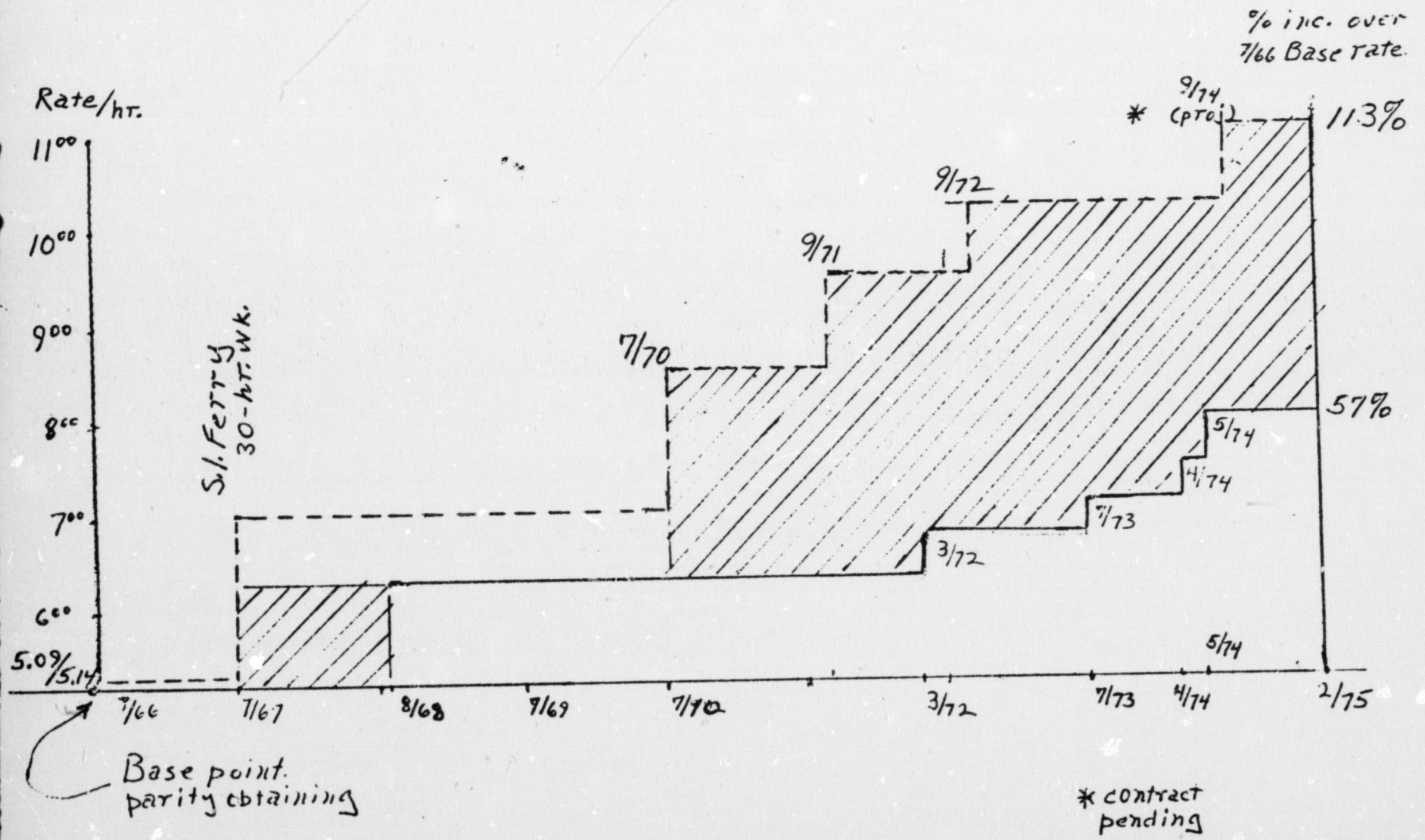
TOTAL, DECKHAND 19004.05
plus individual holiday & overtime accruals

D DECKHANDS' increase 21%
Other categories, 25%

MASTERS' WAGE GRAPH 7/66 - 2/75

CHANGES IN HOURLY RATES, & RELATIVE & ABSOLUTE WAGE DISCREPANCIES RESULTING THEREFROM
GOVERNORS ISLAND (——), STATEN ISLAND FERRIES (- - - -)

Vertical Scale, hourly rates & percentages. Horiz scale, rate-change dates
Hatched Areas, lost earnings; see data sheets 1 & 2



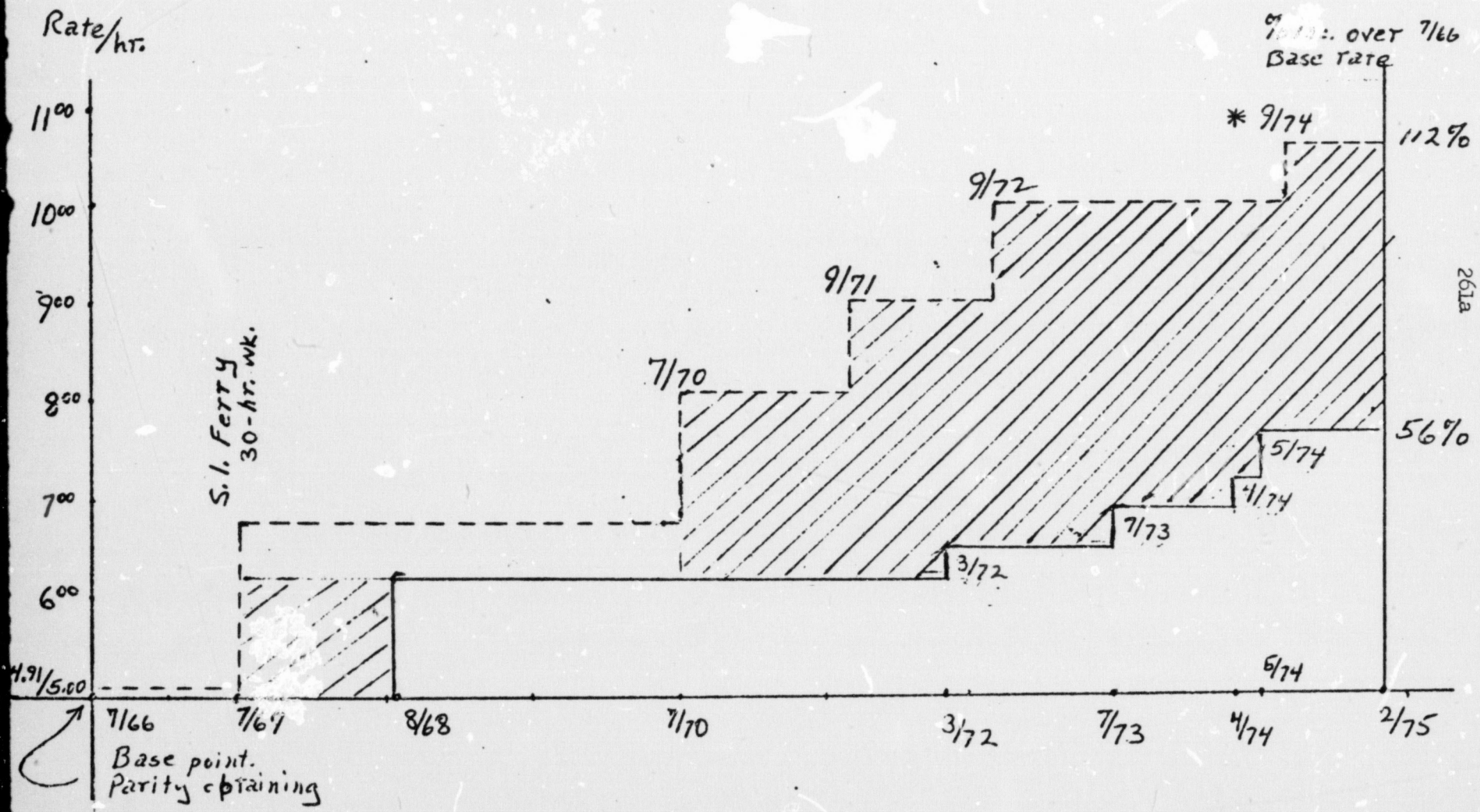
250a

ENGINEERS' WAGE GRAPH 7/66 - 2/75

GOVERNORS ISLAND (——), STATEN ISLAND (- - - -) FERRIES

HOURLY RATE CHANGES, & RELATIVE & ABSOLUTE WAGE DISCREPANCIES RESULTING THEREFROM

vert. Scale, hrly rates & percentages
horiz. Scale, rate-change dates
hatched areas, lost earnings; see Data Sheets 1 & 2



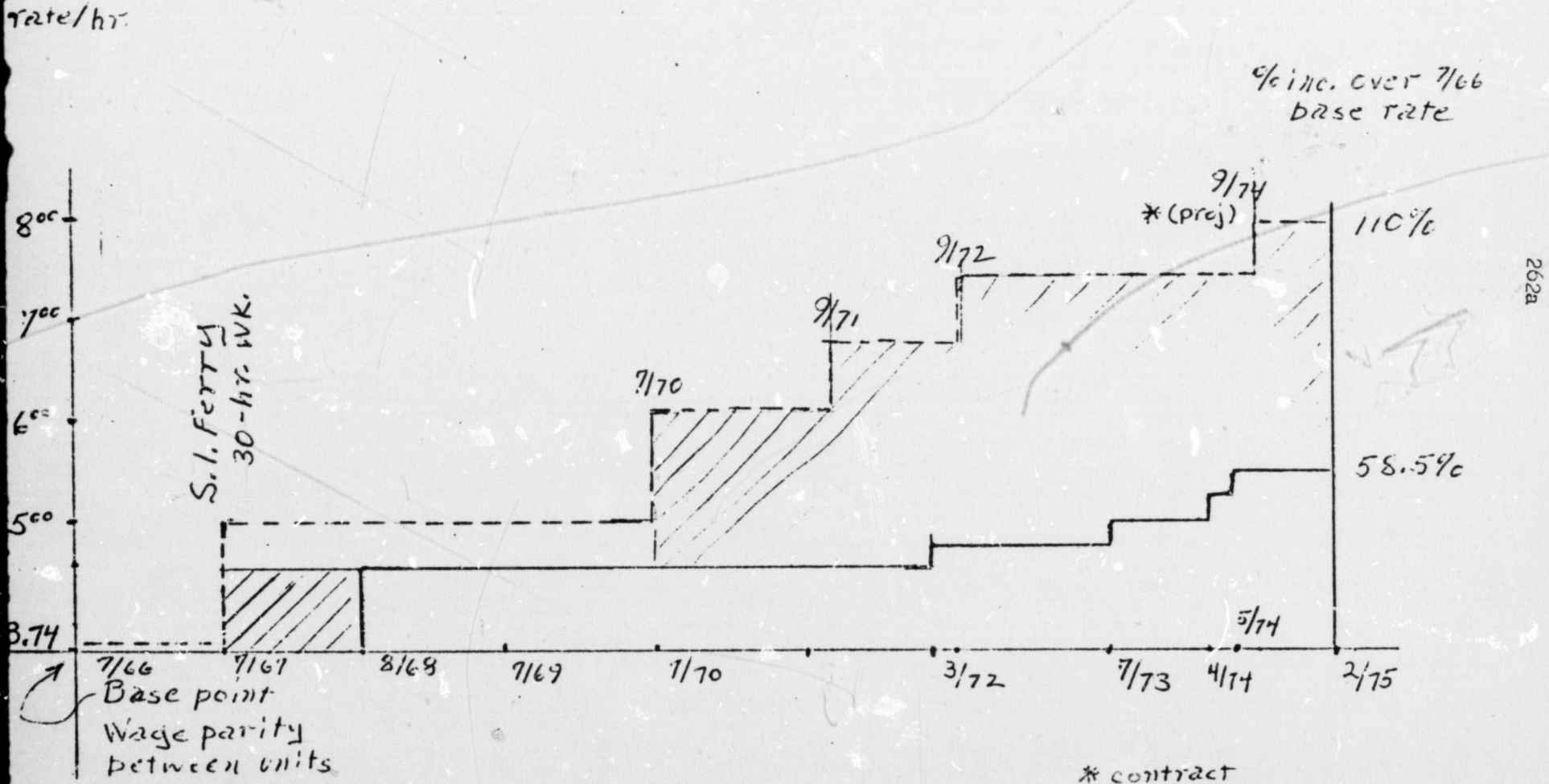
OILERS' GRAPH 7/66 - 2/75

CHANGES IN HOURLY RATES & RELATIVE & ABSOLUTE WAGE DISCREPANCIES RESULTING THEREFROM

GOVERNORS ISLAND (——), STATEN ISLAND FERRIES (- - -)

Vertical scale, hourly rates & percentages Horiz. Scale, rate-change dates

Hatched Areas, lost earnings; see Data Sheets 1 & 2

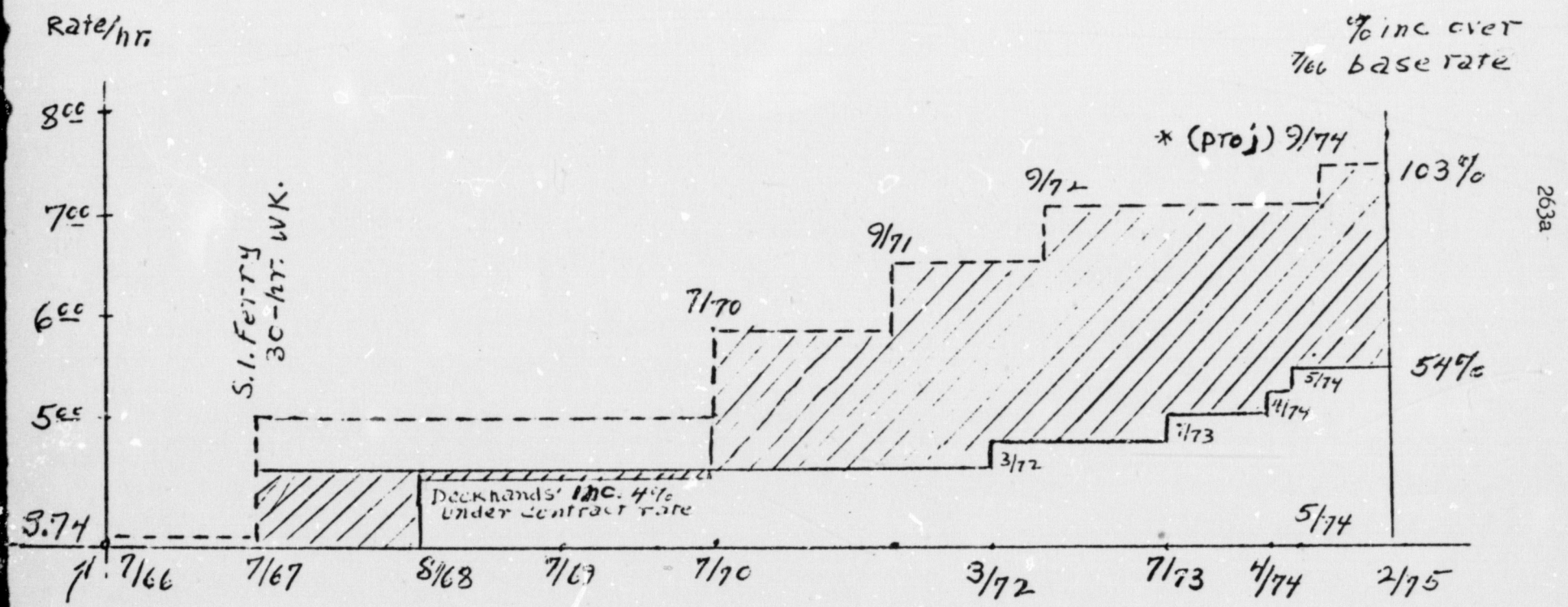


DECKHANDS' GRAPH 7/66 -- 2/75

Changes in hourly rates & relative & absolute wage discrepancies resulting therefrom

Governors Island (——), Staten Island Ferries (- - - -)

Vertical Scale, hourly rates & percentage changes
Horiz. Scale, rate-change dates
Hatched Areas, lost earnings - See data sheets 1 & 2



Base point Wage parity between both units

* awaiting contract approval

Data Sheet #1 Wage rates/hr.

Governors Island, 7/66 to 2/75

Effective Date	MASTER	DECKHAND	ENG.	OILER
7/66	5.09	3.74	4.91	3.74
8/68, 25% in lieu of O S.I. Ferry 30 hr. wk.)	6.36	4.56 *	6.13	4.68
3/72, 5.5%	6.71	4.81	6.47	4.91
7/73, 5.5%	7.08	5.07	6.82	5.15
4/74, 5.5%	7.47	5.35	7.20	5.50
5/74, 6%	7.92	5.68	7.64	5.83

* Deckhands received 21% increase, as opposed to 25% for all other categories. Differential persists to present time

O G.I. Ferry rates increased 25% for 40 hrs., in lieu of S.I. Ferry hourly rate increase of 33⅓% & reduction of working hours from 40 to 30 per week

Data Sheet #2 Wage rates/hr., 7/66 – 2/75

STATEN ISLAND

Effective Date	MASTER	DECKHAND	ENG.	OILER
7/66 o	5.14	3.74	5.00	3.74
7/67 o	7.10	4.99	6.75	4.99
7/70	8.46	5.86	8.19	6.10
9/71	9.31	6.44	9.01	6.71
9/72	10.24	7.09	9.91	7.38
9/74 *	10.96	7.59	10.60	7.90

* contract pending; rate not effective, as of 2/17/75

estimated rates

PLAINTIFF'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
6

PLAINTIFFS' EXHIBIT 6

Letter dated March 26, 1969

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

Address reply to:
COMMANDANT
U.S. COAST GUARD
WASHINGTON, D.C. 20591
(CC/54)
XXX 20590
(202) 426-4280

5730
12 MAY 1972

Honorable Jonathan B. Bingham
House of Representatives
Washington, D. C. 20515

MFs Public Ex. 3 For Ident
8.16.1974 Donna A. Metz

Dear Mr. Bingham:

This is in reply to your correspondence of 19 April 1972 transmitting a letter from Mr. Sergio Bonilla in which he expressed dissatisfaction with wages involving Coast Guard Ferryboat personnel.

We would like to point out that it is the policy of the Coast Guard to establish pay rates consistent with prevailing rates in the New York area and in the public interest.

In this respect, the Coast Guard has consistently acted in good faith. In fact, our first initial pay adjustment to the marine personnel was made as soon as the function was transferred to the Coast Guard in July 1966, and was based on a prior commitment made by the U. S. Army. A pay adjustment approved in December 1969 was to equate our rates with the increases granted in the private sector which resulted in a set of rates representing a overall 25 percent increase retroactive to 25 August 1968. Since wages in the private sector are adjusted every three years, any increase for Coast Guard personnel would tend to follow those increases implemented in the private sector but not necessarily having the same anniversary date, e.g., 25 August 1971 versus 1 July 1970.

In response to a letter requesting a wage increase, Mr. Bonilla's union was advised that their request would be considered upon completion of studies relating to costs and other pertinent factors. This analysis revealed certain legal ramifications that were referred to the General Counsel at the Department of Transportation for resolution. While these matters were being resolved and prior to conducting a survey, President Nixon by Executive Order 11615 directed a 90-day wage freeze. The freeze on the federal establishment continued until 11 January 1972, at which time, the President by Executive Order 11639 authorized pay increases up to 5.5 percent. Accordingly, on the basis of available wage data immediately available in the New York area, an increase of 5.5 percent appeared warranted and was effected on 5 March 1972.

12 MAY 1972

Subj: Reply to Congressman Bingham's ltr of 19 April 1972 Concerning Wage Schedules

A detailed survey in the New York Harbor to determine actual pay rates for positions in the private sector has been completed. Based on the wage data obtained during the survey, we plan to request approval for an additional increase from the U. S. Civil Service Commission. Mr. Bonilla's union, of course, will be apprised of the results.

We trust this information will be of assistance to you.

Sincerely,

GLENN F. YOUNG
Commander, U. S. Coast Guard
Assistant Chief, Congressional Affairs
By direction of the Commandant

PLAINTIFF'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
7

PLAINTIFFS' EXHIBIT 7

Agreement 1967-1970

AGREEMENT

between

THE CITY OF NEW YORK

and

DISTRICT NO. I-PACIFIC COAST DISTRICT,

MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO

1967 - 1970

This Agreement made and entered into this 31st day of JANUARY, 1969, by and between The City of New York (hereinafter referred to, alternately, as "The City" or the "Employer"), acting by the Director of Labor Relations, and District No. 1--Pacific Coast District, Marine Engineers Beneficial Association, AFL-CIO (hereinafter referred to, alternately, as the "Association" or the "Union"), acting by its President.

PREAMBLE

The City and the Union recognize that the uninterrupted operation of the ferry service to the general public is of essential importance. The welfare and interests of City employees and the attainment of a respectable standard of living through decent terms and conditions of employment are compatible with this objective. To this end, the City and the Union mutually pledge themselves, by patient and sincere means, to exert every effort to adjust and settle any and all disputes which may arise between them in a peaceful and amicable manner.

WITNESSETH:

WHEREAS the City and the Union have entered into collective bargaining and desire to reduce the results thereof to writing, NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the City and the Union do hereby mutually agree as follows:

ARTICLE I - UNION RECOGNITION AND UNIT DESIGNATION

Section 1.

The Employer recognizes the Union as the exclusive collective bargaining representative of all employees in the Department of Marine and Aviation in the bargaining unit composed of persons employed in the following titles: Captain, Pilot, Assistant Captain, Mate, Chief Marine Engineer and Marine Engineer.

Section 2.

For purposes of this contract, employees in the above titles may, generally, be referred to as "Licensed Officers" as distinguished from other personnel whose duties with respect to the operation of a ferryboat do not require them to hold a license as a prerequisite for employment.

ARTICLE II - JOB SECURITY

During the term of this agreement the Employer will attempt to retain all Licensed Officers who hold positions by permanent appointment. If curtailment because of a reduced number of runs becomes necessary, the Employer will make every effort to re-employ such officers in vacancies or to replace persons who have provisional appointments to positions for which such licensed officers are eligible, at the rates and working conditions prevailing in the department in which such licensed officers are re-employed. However, no such curtailment shall become effective without prior discussions with the Association.

ARTICLE III - CHECKOFF

Section 1.

The Employer agrees that the Association shall have the exclusive right to the checkoff of dues in behalf of each employee in the Unit.

Section 2.

The employee may consent in writing to the authorization of the deduction ot dues from his wages and designating the Union as the recipient thereof. Such consent, if given, shall be in proper form bearing the signature of the employee. † Agency Shop *

Section 3.

The exclusive checkoff of dues shall be placed in effect as soon as the machinery for the deduction and transmittal of dues on an exclusive checkoff basis is finally completed by the employer.

ARTICLE IV - WAGES

The employer agrees to provide the following per annum rate for each of the employees covered by this agreement in his respective title for the period commencing July 1, 1967, and ending June 30, 1970: Captain - $11,732.00; Pilot - $11,732.00; Assistant Captain - $10,360.00; Mate - $9,475.00; Chief Marine Engineer - $11,354.00; and Marine Engineer - $10,567.00. This article shall not apply to persons hired as temporary replacements, whose wages are set forth in Article VIII of this Agreement.

ARTICLE V - WORK DAY AND WORK WEEK

Section 1.

The annual rates prescribed in Section 2, Article IV, of this

ARTICLE V (Continued)

agreement shall constitute compensation in full for the regular work week for the operation of ferryboat, as practiced in the Department of Marine and Aviation; that is, four (4) eight-hour (8) tours per week which shall be consecutive.

Section 2.

Any regular work week may include work on a Saturday and/or Sunday at no additional compensation, it being understood that the annual rates set forth in this agreement include Saturday and Sunday work.

ARTICLE VI - HOLIDAYS

Section 1.

Effective July 1, 1967, and for each fiscal year thereafter until the expiration of this agreement, the per annum wage rate set forth in Section 2, Article IV, of this agreement shall include payment for the following eight (8) holidays: Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, New Year's Day, Washington's Birthday, and Decoration Day.

Section 2.

During the term of this agreement the employees covered thereunder shall, during each year, also be entitled to receive three (3) non-paid holidays (holidays not included in the per annum wage rate). The three non-paid holidays are: Lincoln's Birthday, Columbus Day and Election Day. Any employee who is required to work on any of such holidays shall receive compensatory time off equal to the number of hours such employee worked.

ARTICLE VI - HOLIDAYS (continued)

Section 3.

An employee who works on any of the eight (8) holidays mentioned in Section 1 of this Article shall receive, over and above his regular compensation, additional compensation in cash for each eight (8) hour day actually worked by him on any such holiday at the following rates for the following titles: Captain - $63.52; Pilot - $63.52; Assistant Captain - $56.08; Mate - $51.28; Chief Marine Engineer - $61.52; and Marine Engineer - $57.20.

ARTICLE VII - OVERTIME

Section 1.

An employee who performs overtime work after the regular assigned daily tour of duty shall be compensated in cash at the respective rates and for the respective titles for each hour of overtime in increments of one-half (1/2) hour as follows: Captain - $7.94; Pilot - $7.94; Assistant Captain - $7.01; Mate - $6.41; Chief Marine Engineer - $7.69; and Marine Engineer - $7.15.

Section 2.

Such overtime pay shall preclude any employee from claiming additional time off for the period of time that he has received paid overtime.

ARTICLE VIII - TEMPORARY REPLACEMENTS

Section 1.- Wages

Employees who receive temporary appointments in the titles mentioned below shall be paid on an hourly or daily rate (of eight (8)

ARTICLE VIII - TEMPORARY REPLACEMENTS (continued)

hours), as the case may be, for the first 30 hours of any calendar week, Saturday and Sunday included, as follows:

TITLE	HOURLY RATE	DAILY RATE (8 Hour)
Captain	$ 5.29	$ 42.38
Pilot	5.29	42.38
Assistant Captain	4.67	37.43
Mate	4.27	34.23
Chief Marine Engineer	5.12	41.02
Marine Engineer	4.77	38.17

Section 2.

Work performed in excess of 30 hours per week and/or in excess of 8 hours on a legal holiday mentioned in Article VI Section 1 shall be paid at the hourly rate set forth in Section 1, Article VII of this agreement.

Section 3.- Holiday Pay

An employee hired as a temporary replacement shall, according to the title of the position in which he is employed, receive holiday pay for work performed on each holiday mentioned below as follows: Time and one-half of the daily rate set forth in Section 1 above in addition to one day's (8 hour) holiday pay at the regular straight time rate. Such holiday pay shall preclude any temporary replacement employee from claiming additional time off. The holidays to which this Section refers are: Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, New Year's Day, Washington's Birthday and Decoration Day.

ARTICLE IX - SPECIAL ADDITIONAL COMPENSATION

Section 1.

During the term of this contract additional compensation shall be provided in the amount of ten cents (10¢) per hour to Licensed Officers in the title of Captain, Pilot, Assistant Captain, Mate, who are qualified by the possession of the appropriate Radio Operators License issued by the Federal Communications Commission, to operate radio-telephone equipment. Such additional compensation shall be limited to the hours during which the Licensed Officer performs duties which will require and include operation of such radio-telephone equipment.

Section 2.

Each Licensed Officer shall be entitled to receive the amount of $150.00 for loss of clothing and personal effects resulting from the sinking of a ferryboat, such payment to be in full compensation for such loss.

ARTICLE X - CONTRIBUTIONS TO UNION HEALTH AND WELFARE FUND

Section 1.

During the term of this contract the City shall provide a sum not to exceed the annual amounts for the periods set forth below for each incumbent Licensed Officer employed on an annual basis, whether permanent or provisional, as a Captain, Pilot, Assistant Captain, Mate, Chief Marine Engineer, and Marine Engineer, or the pro rata share thereof for each such Licensed Officer employed during the term of this contract for a period less than the full term of this contract, for the purpose

ARTICLE X - CONTRIBUTIONS TO UNION
HEALTH AND WELFARE FUND (continued)

of furnishing, as provided in the annexed agreement hereinafter referred to, certain supplementary benefits for the period of employment of such Licensed Officer by the Employer during the term of this Agreement as defined in the annexed separate agreement (effective for a term identical to this agreement) entered into between the City of New York and District No. 1, Pacific Coast District of National Marine Engineers' Beneficial Association, AFL-CIO.

The payments as above indicated shall be remitted by the Employer to: "M.E.B.A. City Employees' Beneficial Fund", subject to the annexed separate agreement entered into between the City of New York and District No. 1, Pacific Coast District of National Marine Engineers' Beneficial Association AFL-CIO for the benefit of each incumbent Licensed Officer and further subject to periodic audit by the Comptroller of the City of New York.

PERIOD	ANNUAL AMOUNT
July 1, 1967 to June 30, 1968	$ 145.00
July 1, 1968 to June 30, 1969	170.00
July 1, 1969 to June 30, 1970	170.00

ARTICLE XI - PENSION

Section 1.

The City shall provide each incumbent Licensed Officer with a supplemental benefit, during the term of this contract, in the form of an added contribution not to exceed a total of five per cent (5%) to the Pension System as outlined by the resolutions adopted by the Board of Estimate and by Executive Orders of the Mayor relative to pension

ARTICLE XI - PENSION (continued)

contributions, and further subject to the provisions of section two of this article, in order to provide for the increased take-home pay as provided by the terms of the aforesaid resolutions.

Section 2.

Pension Benefits shall be provided to the Licensed Officers in accordance with the pension changes agreed upon in City-wide negotiations, subject to all of the provisions and conditions of applicable legislation, including but not limited to any changes in increased take-home pay provisions.

ARTICLE XII - ANNUAL LEAVE (VACATION), SICK LEAVE AND OTHER AUTHORIZED LEAVES

Section 1. - Annual Leave 21 working days

(a) Annual leave shall consist of vacation with pay and leaves due to personal business and shall be granted and be applicable only to employees who are licensed officers and whose appointments are permanent or provisional, and not to those officers who hold temporary appointments.

(b) Annual leave shall be granted annually for vacation purposes on a per annum basis for a period not to exceed four (4) weeks and one (1) day.

(c) Leaves for personal business shall be granted annually on a per annum basis not to exceed four (4) days.

Section 2. - Sick Leave

(a) Sick leave benefits shall be granted and be applicable only to employees who are licensed officers and whose appointments are

ARTICLE XII - ANNUAL LEAVE (VACATION),
SICK LEAVE AND OTHER AUTHORIZED LEAVES (continued)

permanent or provisional, and not to those officers who hold temporary appointments.

(b) Sick leave shall be allowed to be earned and accrued on the basis of one (1) day for each month of employment and shall be cumulative up to one hundred eighty (180) days.

(c) Sick leave may be expended by an employee as and when earned and accrued.

Section 3. - Other Authorized Leaves

(a) Time off with pay, shall be granted to regular Licensed Officers not to exceed three (3) work days in case of death in the immediate family. Immediate family shall be defined for this purpose as spouse, parent (natural, foster, step), mother-in-law, father-in-law, child, brother or sister; or any relative residing in the household.

(b) Two (2) hours of credit (at straight time) shall be granted for purposes of voting on Regular General Election Day.

(c) In the event that the Office of the Mayor issues an order to the various department heads that City Employees be granted a day off or alternate days, the same policy shall be applied to the Licensed Officers.

ARTICLE XIII - OTHER JOB TERMS AND CONDITIONS

Section 1.- Payment. Resignation, Lay-off or Leave of Absence.

All Licensed Officers, permanent and provisional, who resign, are laid off or go on leave of absence (except those employees who may die

ARTICLE XIII - OTHER JOB TERMS AND CONDITIONS (continued)

while in service or those whose services are terminated while charges are pending) shall be paid in cash for all work actually performed including overtime, and earned vacation, at their respective annual or daily rates of pay as the case may be.

Section 2. - Terminal Leave

The Employer shall provide to Licensed Officers in the Department of Marine and Aviation terminal leave in accordance with existing rules governing the grant of terminal leave to other City employees, pursuant to the "Leave Regulations for Employees Who are Under the Career and Salary Plan", as amended by Personnel Order No. 39/68, dated April 30, 1968.

Section 3. - New Vessels

In the event that the Employer introduces newly designed vessels to the ferry service, the Employer agrees to negotiate with the Association a manning scale, wages, working conditions and any other job problem that may arise with respect to such newly designed vessels. The foregoing is not to be construed as a reopening of this agreement in any respect covering licensed officers employed on existing vessels.

Section 4. - Job Bidding

Licensed Officers shall have the right to bid for jobs on the basis of seniority. Such bid will be permanent for one year.

Changes may be made before the expiration of the year by mutual consent of the Licensed Officers subject to prior approval by the Employer. Such approval shall not be unreasonably withheld.

ARTICLE XIII - OTHER JOB TERMS AND CONDITIONS (continued)

Section 5. - Prohibited Work

No Licensed Officer will be required to clean the vessels.

Section 6. - Assignment of Overtime

(a) There shall be established in each title of Licensed Officers covered by this contract a list of Officers in seniority order who have signified in writing to the Office of the Director of Ferries that they will be available for overtime work.

(b) The assignment of overtime work in each title will be made from the established list on a rotating basis. When a Licensed Officer either accepts or refuses overtime assignment in his turn he rotates to the bottom of the list and will not be called again until all of the officers in that title have either accepted or refused an assignment to work overtime at least once.

(c) If it is impossible to fill an overtime assignment in any particular title in the above manner the job may be assigned to another qualified employee of the agency to be selected at the sole discretion of the agency head.

Section 7. - Provisional Appointments

(a) In the event vacancies occur in any of the Licensed Titles and no eligible list is in existence, then the Department shall fill, in its sole discretion, such vacancies by provisional appointments of employees possessing both the required United States Coast Guard License and the Civil Service Requirements for such appointment.

ARTICLE XIII - OTHER JOB TERMS AND CONDITIONS (continued)

Section 7. - Provisional Appointments (continued)

(b) These provisional appointments, subject to the sole discretion of the agency head as to ability and fitness, shall be made in accordance with seniority effective as of the time the employee registered with the personnel officer the documents as required in the Civil Service Requirements for the respective title.

(c) The Department agrees to take initial steps to request the conduct of promotion examinations for the purpose of eliminating the provisional appointments in accordance with Civil Service Law.

Section 8. - Temporary Appointments

(a) Whenever it is necessary to make temporary appointments to a licensed position, such appointments shall be made in accordance with the employees standing on an eligible list consistent with Civil Service Law.

Correct (b) If there is no eligible list in existence then temporary appointment shall be made subject to the sole discretion of the agency head as to ability and fitness in accordance with seniority, effective as of the time the employee registered with the personnel officer the documents as required in the Civil Service Requirements for the respective titles.

ARTICLE XIV - GRIEVANCES AND ARBITRATION

Section 1.

All disputes relating to the interpretation or application of any of the provisions of this contract which may arise between the parties

ARTICLE XIV - GRIEVANCES AND ARBITRATION (continued)

Section 1. (continued)

hereto, shall be governed and controlled by, and in accordance with, the grievance procedures set forth in Mayoral Executive Order No. 52, dated September 29, 1967, Section 8, Grievance Procedures, Subsections a, c, d, and e, or any amendment thereto.

ARTICLE XV - UNION REPRESENTATIVE - UNION ACTIVITY

Section 1.

Upon request, which shall not be unreasonably denied, and upon showing proper identification to the employer's representatives, Association representatives shall have the right to go on the property and vessels of the Employer for the purpose of consulting with the Licensed Officers or the Employer or Agents of the Employer. Such visits shall be made at reasonable times and in no way interfere with the operation, loading or discharging of the Employer's vessels.

Section 2.

The Association will maintain and furnish the employer a copy of an insurance policy which will protect the Employer against any claim for loss of life or injury occurring to a representative of the Association while on the property or a vessel of the Employer.

Section 3.

Time spent by Union Officials and representatives in the conduct of labor relations shall be governed by the provisions of Mayor's Executive Order No. 38, dated May 16, 1957. No employee shall otherwise engage in Union activities during the time he is assigned to his regular duties.

ARTICLE XV - UNION REPRESENTATIVE - UNION ACTIVITY (continued)

Section 4. - Union Activity During Working Hours

Solicitation of union membership or collection of dues will not be conducted during working hours. The Employer agrees not to discriminate in any way against any employee for Union activity, but such activity shall not be carried on during working hours, except as specifically allowed by the provisions of this agreement.

ARTICLE XVI - UNIFORM ALLOWANCE

Section 1.

Licensed Officers covered by this agreement shall be reimbursed for the cost of uniforms for the period shown below:

	1967	1968	1969
PILOT	$70.00	$70.00	$70.00
CAPTAIN	70.00	70.00	70.00
ASSISTANT CAPTAIN	70.00	70.00	70.00
MATE	70.00	70.00	70.00

ARTICLE XVII - NO STRIKE - NO LOCKOUT

Section 1.

Neither the Union nor any employee covered by this agreement shall induce or engage in any strikes, slowdowns, work stoppages, or mass absenteeism, nor shall the Union induce any mass resignations during the term of this agreement.

Section 2.

The City shall not lock out any employees covered by this agreement.

ARTICLE XVII - NO STRIKE - NO LOCKOUT (continued)

Section 3.

The foregoing Sections '1' and '2' shall not be construed to limit the rights of the City or the duties of the employees and the Union under State law.

ARTICLE XVIII - BULLETIN BOARDS

Section 1.

The Union may maintain bulletin boards in places and locations where notices are usually posted by the employer for the employees to read. Such bulletin boards shall be used only for the purpose of notifying employees in the Unit of matters pertaining to Union business. All notices shall be on Union stationery.

ARTICLE XIX - PRECEDENCE OF LAW AND REGULATIONS

Section 1.

This agreement is subject to the provisions of all applicable existing or future laws and regulations and to Mayoral Executive Order No. 52 and amendments thereto.

Section 2.

If any provision or the enforcement or performance of any provision of this agreement is or shall at any time be contrary to applicable law and regulations, or to Mayoral Executive Order No. 52, then such provision shall not be applicable or enforced or performed, except to the extent permitted by law.

ARTICLE XX - SAVINGS CLAUSE

Section 1.

In the event that any provision of this agreement shall be finally determined to be in violation of any applicable law, regulation or Mayoral Executive Order No. 52, such determination shall not impair the validity and enforceability of the remaining other provisions of this agreement.

ARTICLE XXI - DURATION

This agreement is effective as of July 1, 1967, and shall remain in full force and effect for the period of three (3) years, commencing July 1, 1967, and ending June 30, 1970.

ARTICLE XXII - APPLICATION OF CONTRACT

It is specifically understood and agreed that the terms and provisions of this contract and the benefits granted thereunder shall be applicable to each employee in the unit described in Section 1, Article I of this contract as of July 1, 1967, the effective date of this contract, provided, however, that each such employee in the unit executes the following instruments and the provisions of such instruments are complied with:

a. A waiver of any rights such employee may have under section 220 of the Labor Law in a form and manner approved by the Corporation Counsel's office for such purposes (see Appendix 'A') and;

b. A Release to the City of New York in the form now used by the City for such purpose (see Appendix 'B').

In Witness Whereof, the parties hereto have entered into this agreement as of the day and year first above written.

THE CITY OF NEW YORK

By: _____
Director of Labor Relations

THE UNION:

DISTRICT NO.1, PACIFIC COAST DISTRICT, MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO.

By: _____ (Title)

_____ (Title)

_____ (Title)

_____ (Title)

Plaintiffs' Exhibit 7 (Continued)

AGREEMENT

between

THE CITY OF NEW YORK

and

DISTRICT NO. 1 - PACIFIC COAST DISTRICT,

MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO

1970-1973

This Agreement made and entered into this 4th day of August 1972, by and between The City of New York (hereinafter referred to as the "Employer"), acting by the Director of Labor Relations, and District No. 1-Pacific Coast District, Marine Engineers Beneficial Association, AFL-CIO (hereinafter referred to as the "Union"), acting by its President.

PREAMBLE

The Employer and the Union recognize that the uninterrupted operation of the ferry service to the general public is of essential importance. The welfare and interests of City employees and the attainment of a respectable standard of living through decent terms and conditions of employment are compatible with this objective. To this end, the Employer and the Union mutually pledge themselves, by patient and sincere means, to exert every effort to settle any and all disputes which may arise between them in a peaceful and amicable manner.

WITNESSETH:

WHEREAS the Employer and the Union have entered into collective bargaining and desire to reduce the results thereof to writing, NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Employer and the Union do hereby mutually agree as follows:

ARTICLE I - UNION RECOGNITION AND UNIT DESIGNATION

Section 1.

The Employer recognizes the Union as the exclusive collective bargaining representative of all Licensed Officers (hereinafter referred to as "Employees") in the Department of Marine and Aviation in the bargaining unit composed of persons employed in the following titles: Captain/Pilot, Assistant Captain, Mate, Chief Marine Engineer and Marine Engineer.

Section 2.

For purposes of this contract, employees in the above titles may, generally, be referred to as "Licensed Officers" as distinguished from other personnel whose duties with respect to the operation of a ferryboat do not require them to hold a license as a prerequisite for employment.

Section 3.

For purposes of this contract, per annum shall mean per annum based employees, both permanent and provisional. Temporary means hiring-hall employees. Step up employees are per annum employees of the Ferry operating service of the Department of Marine & Aviation assigned to work in a higher title.

ARTICLE II - JOB SECURITY

During the term of this agreement, the Employer will attempt to retain all per annum employees who hold positions by permanent appointment. If curtailment because of a reduced number of runs becomes necessary, the Employer will make every effort to re-employ such Employees in vacancies or to replace persons who have provisional appointments to positions for which such Employees are eligible, at the rates and working conditions prevailing in the department in which such Employees are re-employed. However, no such curtailment shall become effective without prior discussion with the Union.

ARTICLE III - CHECKOFF

Section 1.

The Employer agrees that the Union shall have the exclusive right to the checkoff of dues in behalf of each per annum Employee in the Unit.

Section 2.

The per annum Employee may consent in writing to the authorization of the deduction of dues from his wages and designating the Union as the recipient thereof. Such consent, if given, shall be in proper form bearing the signature of the Employee.

Section 3.

The parties agree to an Agency Shop to the extent permitted by applicable law, the provisions of which are to be contained in a supplemental agreement to be annexed hereto.

ARTICLE IV - WAGES

(A) Agreed annual rates - per annums

	7/1/70	9/1/71	9/1/72
Captain/Pilot	$14365.08	$15808.38	$17387.52
Ch.Mar.Engr.	13906.62	15298.98	16827.18
Mar.Engr.	12955.74	14246.22	15672.54
Asst.Capt.	12684.06	13957.56	15349.92
Mate	11597.34	12751.98	14025.48

(B) The rates contained in this Article shall not apply to persons hired as temporary replacements or Step up employees whose rates are set forth in Article VII of this agreement.

ARTICLE V - WORK DAY, WORK WEEK, AND WORK YEAR

Section 1.

The annual rates prescribed in Article IV, A. of this agreement shall constitute compensation in full for the regular work week for the operation of ferryboats as practiced in the Department of Marine and Aviation; that is, four (4) eight-hour (8) tours per week which shall be consecutive, and 206 (8) eight-hour days per annum of which 198 eight-hour (8) days are work days (representing 1484 hours worked at straight time pay plus 100 hours worked at overtime pay), and eight (8) eight-hour days of which are paid holidays (representing 64 hours of holiday pay at straight time.)

Section 2.

Any regular work week may include work on a Saturday and/or Sunday at no additional compensation, it being understood that the annual rates set forth in this agreement include Saturday and Sunday work.

ARTICLE VI - HOLIDAYS

Section 1.

Effective July 1, 1970 and for each fiscal year thereafter until the expiration of this agreement, the per annum wage rate set forth in Article IV of this agreement shall include payment for the following eight (8) holidays: Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, New Year's Day, Washington's Birthday, and Decoratio: Day.

ARTICLE VI - HOLIDAYS (continued)

Section 2.

During the term of this agreement, the per annum Employees covered hereunder shall, during each year, also be entitled to receive three (3) non-paid holidays (holidays not included in the per annum wage rate.) The three non-paid holidays are: Lincoln's Birthday, Columbus Day and Election Day. Any per annum Employee who is required to work on any of such holidays shall be entitled to receive compensation pay in the form of compensatory time off equal to the number of hours such Employee worked.

Section 3.

A per annum Employee who works on any of the eight (8) holidays mentioned in Section 1 of this Article shall receive, over and above his regular compensation, additional compensation in cash for each eight (8) hour day actually worked by him on any such holiday at the following rates for the following titles:

	7/1/70	9/1/71	9/1/72
Captain/Pilot	$101.52	$111.72	$122.88
Ch. Mar. Engr.	98.28	108.12	118.92
Mar. Engr.	91.56	100.68	110.76
Asst. Capt.	89.64	98.64	108.48
Mate	81.96	90.12	99.12

ARTICLE VII - STEP UP or TEMPORARY REPLACEMENTS HOURLY, DAILY HOLIDAY & OVERTIME RATES OF PAY

Section 1.

Step up replacements in the titles mentioned below shall be paid in accordance with Appendix "C" attached to this agreement.

Temporary replacements in the titles mentioned below shall be

paid an hourly rate of pay for the first thirty (30) hours of work per week as set forth in Article IX.

Captain/Pilot
Ch. Mar. Engr.
Mar. Engr.
Asst. Captain
Mate

Section 2.

If a step up or temporary replacement works on paid holiday, as mentioned below, he shall, according to the title of the position in which he is employed, receive holiday pay as follows:

A temporary replacement shall receive the hourly rate set forth in Article IX of this agreement plus an additional amount as set forth in Article VIII, Section 1 of this agreement for each hour worked on a holiday.

A step up Employee working on a holiday shall be paid in accordance with Appendix "C" attached to this agreement.

Such holiday pay shall preclude any step up Employee or temporary replacement Employee from claiming additional time off.

The holidays to which this Section refers are Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, New Year's Day, Washington's Birthday and Decoration Day.

Section 3.

A temporary replacement who works in excess of eight (8) hours per day or thirty (30) hours per week shall be compensated in cash at the respective rates and for the respective titles for each hour of overtime in increments of one-half (1/2) hour as set forth in Article VIII, Section 1 of this agreement.

A step up Employee who works in excess of eight (8) hours per day or thirty (30) hours per week shall be paid in accordance with Appendix "C" attached to this agreement.

ARTICLE VIII - OVERTIME

Section 1.

A Per Annum Employee who works in excess of eight (8) hours per day or four (4) consecutive days per week or one hundred ninety-eight (198) days per year or eight (8) hours on a legal holiday shall be compensated in cash at the respective rates and for the respective titles for each hour of overtime in increments of one-half (1/2) hour as follows:

	7/1/70	9/1/71	3/1/72
Captain/Pilot	$12.69	$13.965	$15.36
Ch. Mar. Engr.	12.285	13.515	14.865
Mar. Engr.	11.445	12.585	13.845
Asst. Captain	11.205	12.33	13.56
Mate	10.245	11.265	12.39

Section 2.

Such overtime shall preclude any employee from claiming additional time off for the period of time that he has received paid overtime.

ARTICLE IX - HOURLY AND DAILY RATE

Section 1.

Per Annum Employees in the titles mentioned below shall be paid on an hourly or daily rate for the first thirty (30)hours of work per week as follows:

	HOURLY RATE 7/1/70	HOURLY RATE 9/1/71	HOURLY RATE 9/1/72
Captain/Pilot	$ 8.46	$ 9.31	$10.24
Ch. Mar. Engr.	8.19	9.01	9.91
Mar. Engr.	7.63	8.39	9.23
Asst. Capt.	7.47	8.22	9.04
Mate	6.83	7.51	8.26

ARTICLE X - SPECIAL ADDITIONAL COMPENSATION

Section 1.

During the term of this contract additional compensation shall be provided in the flat amount of ten cents (10¢) per hour to Licensed Officers in the title of Captain, Pilot, Assistant Captain, Mate who are qualified by the possession of the appropriate Radio Operators License issued by the Federal Communications Commission to operate radio-telephone equipment. Such additional compensation shall be limited to the hours during which the Licensed Officer performs duties which will require and include operation of such radio-telephone equipment.

Section 2.

Each Licensed Officer shall be entitled to receive the amount of $150.00 for loss of clothing and personal effects resulting from the sinking of a ferryboat, such payment to be deemed to be full compensation for such lo

ARTICLE XI - CONTRIBUTIONS TO UNION HEALTH AND WELFARE FUND

Section 1.

During the term of this contract the Employer shall provide a sum not to exceed the annual amounts for the periods set forth below for each incumbent per annum employee employed as a Captain, Pilot, Assistant Captain, Mate, Chief Marine Engineer and Marine Engineer, or

the pro rata share thereof for each such Licensed Officer employed during the term of this contract for a period less than the full term of this contract, for the purpose of furnishing, as provided in the annexed agreement hereinafter referred to, certain supplementary benefits for the period of employment of such Licensed Officer by the Employer during the term of this agreement as defined in the annexed separate agreement entered into between the City of New York and District No. 1, Pacific Coast District of National Marine Engineers Beneficial Association, AFL-CIO.

The payments as above indicated shall be remitted by the Employer to: "M.E.B.A. City Employees' Beneficial Fund", subject to the annexed separate agreement entered into between the City of New York and District 1 Pacific Coast District of National Marine Engineers' Beneficial Association AFL-CIO for the benefit of each incumbent Licensed Officer and further subject to periodic audit by the Comptroller of the City of New York.

	PERIOD	ANNUAL AMOUNT
Effective	July 1, 1970	$170.00
Effective	January 1, 1971	175.00
Effective	January 1, 1972	250.00

ARTICLE XII - PENSIONS

Section 1.

The Employer shall provide each incumbent per annum Licensed Officer with a supplemental benefit, during the term of this contract, in the form of an added contribution not to exceed a total of five per cent (5%) to the Pension System as outlined by the resolutions adopted by the Board of Estimate and by Executive Orders of the Mayor relative to pension contributions, and further subject to the provisions

of Section 2 of this Article, in order to provide for the increased take-home pay as provided by the terms of the aforesaid resolutions.

Section 2.

Pension Benefits shall be provided to the Licensed Officers in accordance with the pension changes agreed upon in Citywide negotiations, subject to all of the provisions and conditions of applicable legislation, including but not limited to any changes in increased take-home pay provisions.

ARTICLE XIII - ANNUAL LEAVE (VACATION), SICK LEAVE AND OTHER AUTHORIZED LEAVES

Section 1. - Annual Leave

(a) Annual Leave shall consist of vacation with pay and leaves due to personal business and shall be granted and be applicable only to per annum Employees, and not to temporary officers as defined in Article 1, Section 3 of this agreement.

(b) Annual Leave shall be granted annually for vacation purposes on a per annum basis for a period not to exceed four (4) weeks and one (1) day. (17 working days)

(c) Leaves for personal business shall be granted annually on a per annum basis not to exceed four (4) days.

Section 2. - Sick Leave

(a) Sick Leave benefits shall be granted and be applicable only to per annum Employees and not to temporary officers as defined in Article 1, Section 3 of this agreement.

(b) Sick Leave shall be allowed to be earned and accrued on the basis of one (1) day for each month of employment and shall be cumulative up to one hundred eighty (180) days.

(c) Sick Leave may be expended by a Licensed Officer as and when earned and accrued, excluding temporary officers as defined in Article I, Section 3 of this agreement.

(d) 1. A verifying statement from the Licensed Officer's doctor shall not be required by the employer for sick claims of two (2) days or less.

2. For claims of more than two (2) working days, the Licensed Officer must secure a verifying statement from his doctor to support his claim. This statement should be sent in as soon as possible after the period of absence is over.

3. A verifying statement from the Licensed Officer's doctor may be required by the department where there is absence of more than one (1) working day in the case of chronic absenteeism.

Section 3. - Other Authorized Leaves

(a) Time off with pay shall be granted to per annum Licensed Officers not to exceed three (3) work days in case of death in the immediate family. Immediate family shall be defined for this purpose as spouse, parent (natural, foster, step), mother-in-law, father-in-law, child, brother or sister; or any relative residing in the household.

(b) Two (2) hours of credit (at straight time) shall be granted for purposes of voting on Regular General Election Day.

(c) In the event that the Office of the Mayor issues an order to the various department heads that City employees be granted a day off or alternate days, the same policy shall be applied to the Licensed Officers.

ARTICLE XIV - OTHER JOB TERMS AND CONDITIONS

Section 1. - Payment, Resignation, Lay-off or Leave of Absence.

All per annum Licensed Officers who resign, are laid off or go on leave of absence (except those Employees who may die while in service or those whose services are terminated while charges are pending) shall be paid in cash for all work actually performed including overtime, and earned vacation, at their respective annual or daily rates of pay as the case may be.

Section 2. - Terminal Leave

The Employer shall provide to per annum Licensed Officers in the Department of Marine and Aviation terminal leave in accordance with existing rules governing the grant of terminal leave to other City employees, pursuant to the "Leave Regulations for Employees Who Are Under the Career and Salary Plan", as amended by Personnel Order No. 39/68, dated April 30, 1968.

Section 3. - New Vessels

In the event that the Employer introduces newly designed vessels to the ferry service, the Employer agrees to negotiate with the Union a manning scale, wages, working conditions and any other job problem that may arise with respect to such newly designed vessels. The foregoing is not to be construed as a reopening of this agreement in any respect covering licensed officers employed on existing vessels.

Section 4. - Job Bidding

Per annum Licensed Officers shall have the right to bid for jobs on the basis of seniority. Such bid will be permanent for one year.

Changes may be made before the expiration of the year by mutual consent of the Licensed Officers subject to prior approval by the Employer. Such approval shall not be unreasonably withheld.

Section 5. - Prohibited Work

No Licensed Officer will be required to clean the vessels.

Section 6. - Assignment of Overtime

(a) There shall be established in each title of Licensed Offic covered by this contract a list of Officers in seniority order who have signified in writing to the Office of the Director of Ferries that they will be available for overtime work.

(b) The assignment of overtime work in each title will be made from the established list on a rotating basis. When a Licensed Officer either accepts or refuses overtime assignment in his turn, he rotates to the bottom of the list and will not be called again until all of the Offic in that title have either accepted or refused an assignment to work overti at least once.

(c) If it is impractical to fill an overtime assignment in any particular title in the above manner, the job may be assigned to another qualified employee of the agency to be selected at the sole discretion of the agency head.

Section 7. - Provisional Appointments

(a) In the event vacancies occur in any of the Licensed Titles an no eligible list is in existence, then the Department shall fill, in its sole discretion, such vacancies by provisional appointments of employees possessing both the required United States Coast Guard License and the Civil Service Requirements for such appointment.

(b) These provisional appointments, subject to the sole discretion of the agency head as to ability and fitness, shall be made in accordance with seniority effective as of the time the employee registered with the personnel officer the documents as required in the Civil Service Requirements for the respective title.

Section 8. - Temporary Replacement Appointments

(a) Whenever it is necessary to make temporary replacement appointments to a licensed position, such appointments shall be made in accordance with the employees standing on an eligible list consistent with Civil Service Law.

(b) If there is no eligible list in existence, then the temporary replacement appointment shall be made subject to the sole discretion of the agency head as to ability and fitness in accordance with seniority, effective as of the time the employee registered with the personnel officer the documents as required in the Civil Service Requirements for the respective titles.

ARTICLE XV - GRIEVANCES AND ARBITRATION

Section 1.

All disputes relating to the interpretation or application of any of the provisions of this contract which may arise between the parties hereto, shall be governed and controlled by, and in accordance with, the grievance procedures set forth in Mayoral Executive Order No. 52, dated September 29, 1967, Section 8, Grievance Procedures, Sub-sections a, c, d, and e, or any amendment thereto.

ARTICLE XVI - UNION REPRESENTATIVE - UNION ACTIVITY

Section 1.

Upon request, ~~which shall not be unreasonably denied,~~ and upon showing proper identification to the Employer's representatives, Union representatives shall have the right to go on the property and vessels of the Employer for the purpose of consulting with the Licensed Officers or the Employer or Agents of the Employer. Such visits shall be made at reasonable times and in no way interfere with the operation, loading or discharging of the Employer's vessels.

Section 2.

The Union will maintain and furnish the Employer a copy of an insurance policy which will protect the Employer against any claim for loss of life or injury occurring to a representative of the Union while on the property or a vessel of the Employer.

Section 3.

Time spent by Union officials and representatives in the conduct of labor relations shall be governed by the provisions of Mayor's Executive Order No. 38, dated May 16, 1957. No Licensed Officers shall otherwise engage in Union activities during the time he is assigned to his regular duties.

Section 4. - Union Activity During Working Hours

Solicitation of union membership or collection of dues will not be conducted during working hours. The Employer agrees not to discriminate in any way against any Licensed Officer for Union activity but such activity shall not be carried on during working hours, except as specifically allowed by the provisions of this agreement.

ARTICLE XVII - UNIFORM ALLOWANCE

Section 1.

Licensed Officers covered by this agreement shall be reimbursed for the cost of uniforms for the period shown below:

	7/1/70	9/1/71	9/1/72
Pilot/Captain	$70.00	$70.00	$70.00
Assistant Captain	70.00	70.00	70.00
Mate	70.00	70.00	70.00

ARTICLE XVIII - NO STRIKE - NO LOCKOUT

Section 1.

Neither the Union nor any Licensed Officer covered by this agreement shall induce or engage in any strikes, slowdowns, work stoppages, or mass absenteeism, nor shall the Union induce any mass resignations during the term of this agreement.

Section 2.

The Employer shall not lock out any Licensed Officers covered by this agreement.

Section 3.

The foregoing Sections "1" and "2" shall not be construed to limit the rights of the Employer or the duties of the Employees and the Union under State Law.

ARTICLE XIX - BULLETIN BOARDS

Section 1.

The Union may maintain bulletin boards in places and locations where notices are usually posted by the Employer for the Licensed Officers to read. Such bulletin boards shall be used only for the purpose of notifying Licensed Officers in the Unit of matters pertaining to Union business. All notices shall be on Union stationery.

ARTICLE XX - PRECEDENCE OF LAW AND REGULATIONS

Section 1.

This agreement is subject to the provisions of all applicable existing or future laws and regulations and to Mayoral Executive Order No. 52 and amend-

ments thereto.

Section 2.

If any provision of the enforcement or performance of any provision of this agreement is or shall at any time be contrary to applicable law and regulations, or to Mayoral Executive Order No. 52 or succeeding Mayoral Executive Order, then such provision shall not be applicable or enforced or performed, except to the extent permitted by law, regulations or Mayoral Executive Orders.

Section 3.

The terms and conditions of this agreement are subject to the provisions of Presidential Executive Order 11615, dated August 15, 1971, to the Economic Stabilization Act of 1970, to any and all amendments of the foregoing, and to any other applicable enactment, determination, decision, opinion or order insofar as the same may affect the terms and provisions of this agreement.

ARTICLE XXI - SAVINGS CLAUSE

Section 1.

In the event that any provision of this agreement shall be finally determined to be in violation of any applicable law, regulation or Mayoral Executive Order No. 52, or succeeding Mayoral Order, such determination shall not impair the validity and enforceability of the remaining other provisions of this agreement.

ARTICLE XXII - DURATION

This agreement is effective as of July 1, 1970 and shall remain in full force and effect for the period commencing July 1, 1970 and ending August 31, 1973.

ARTICLE XXIII - APPLICATION OF CONTRACT

It is specifically understood and agreed that the terms and provisions of this contract and the benefits granted hereunder shall be applicable to each Employee in the Unit described in Section 1, Article I of this contract as of July 1, 1970, the effective date of this contract, provided, however, that each such Licensed Officer in the Unit executes the following instruments and the provisions of such instruments are complied with:

a. A waiver of any rights such Licensed Officer may have under Section 220 of the Labor Law in a form and manner approved by the Corporation Counsel's office for such purposes (see Appendix "A") and;

b. A Release to the City of New York in the form now used by the Employer for such purpose (see Appendix "B").

In Witness Whereof, the parties hereto have entered into this agreement as of the day and year first above written.

THE CITY OF NEW YORK

By: Walter L Hall
Director of Labor Relations

THE UNION:

DISTRICT No. 1, PACIFIC COAST DISTRICT, MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO.

By: J. M. Calhoon, a.d.
President

D. A Lamy, a.d. Vice Pres. Atlantic Coast.

A. Di Maggio Director N.J. Inland + Harbor Contracts

Approved as to Form

Corporation Counsel

APPENDIX "C"

SCHEDULE OF PER HOUR AND PER DIEM DIFFERENTIALS IN PAY
FOR PER ANNUM EMPLOYEES WHEN WORKING AS STEP UP EMPLOYEES

) Hourly Differential for first 30 hours per week when working in higher title

	Marine Oiler Water Tender			Mate			Asst. Captain			Marine Engineer			Chief Marine Engineer			Captain/Pilot		
Effective	7/1/70	9/1/71	9/1/72	7/1/70	9/1/71	9/1/72	7/1/70	9/1/71	9/1/72	7/1/70	9/1/71	9/1/72	7/1/70	9/1/71	9/1/72	7/1/70	9/1/71	9/1/72
ckhand/Mar. Stoker	.24	.27	.29	.97	1.07	1.17	1.61	1.78	1.95	1.77	1.95	2.14	2.33	2.57	2.82	2.60	2.87	3.15
r.Oiler/Water Tender				.73	.80	.88	1.37	1.51	1.66	1.53	1.68	1.85	2.09	2.30	2.53	2.36	2.60	2.86
te							.64	.71	.78	.80	.88	.97	1.36	1.50	1.65	1.63	1.80	1.98
st. Captain										.16	.17	.19	.72	.79	.87	.99	1.09	1.20
r.Engineer													.56	.62	.68	.83	.92	1.01
. Mar. Eng.																.27	.30	.33
pt/Pilot																		

) Hourly Differential for 31st and 32nd hour per week when working in higher title

	Marine Oiler			Mate			Asst. Captain			Marine Engineer			Chief Marine Engineer			Capta /Pilot		
Effective	7/1/70	9/1/71	9/1/72	7/1/70	9/1/71	9/1/72	7/1/70	9/1/71	9/1/72	7/1/70	9/1/71	9/1/72	7/1/70	9/1/71	9/1/72	7/1/	9/1/71	9/1/72
ckhand/Mar. Stoker	.36	.405	.435	1.455	1.605	1.755	2.415	2.67	2.925	2.655	2.925	3.21	3.495	3.855	4.23	3.90	4.305	4.725
r.Oiler/Water Tender				1.095	1.20	1.32	2.055	2.265	2.49	2.295	2.52	2.775	3.135	3.45	3.795	3.54	3.90	4.29
te							.96	1.065	1.17	1.20	1.32	1.455	2.04	2.25	2.475	2.445	2.70	2.97
st. Captain										.24	.255	.285	1.08	1.185	1.305	1.485	1.635	1.80
r. Engineer													.84	.93	1.02	1.245	1.38	1.515
. Mar. Eng.																.405	.45	.495
pt./Pilot																		

NOTES: A) The schedule set forth directly hereinabove (paragraph #2) is applicable only when an enployee works more than 30 hours per week in any one higher title on his regularly assigned tours. If a person works in more than one higher title during the week on such tours, use rates set forth in (1) above for all differentials payable for such tours.

B) For purposes only of determining when the rates for the thirty-first and thirty-second hour of work per week in one higher title are to be paid, tours from which an employee is excused by reason of the holiday provisions of the respective agreement are to be counted as time worked in the first 30 hours per week.

(3) Daily Differentials for holidays not worked that falls in a pay period provided that employees work in the higher category for all assigned shifts during the pay period

Effective	Marine Oiler Water Tender			Mate			Asst. Capt.			Marine Engineer			Chief Marine Engineer			Captain/Pilot		
	7/1/70	9/1/71	9/1/72	7/1/70	9/1/71	9/1/72	7/1/70	9/1/71	9/1/72	7/1/70	9/1/71	9/1/72	7/1/70	9/1/71	9/1/72	7/1/70	9/1/71	9/1/72
Deckhand/Mar. Stoker	1.92	2.16	2.32	7.76	8.56	9.36	12.88	14.24	15.60	14.16	15.60	17.12	18.64	20.56	22.56	20.80	22.96	25.20
Mar.Oiler/Water Tender	. . . . .			5.84	6.40	7.04	10.96	12.08	13.28	12.24	13.44	14.80	16.72	18.40	20.24	18.88	20.80	22.88
Mate	. . . . .			. . . . .			5.12	5.68	6.24	6.40	7.04	7.76	10.88	12.00	13.20	13.04	14.40	15.84
Asst. Captain	. . . . .			. . . . .			. . . . .			1.28	1.36	1.52	5.76	6.32	6.96	7.92	8.72	9.60
Marine Engineer	. . . . .			. . . . .			. . . . .			. . . . .			4.84	4.96	5.44	6.64	7.36	8.08
Ch. Mar. Eng.	. . . . .			. . . . .			. . . . .			. . . . .			. . . . .			2.16	2.40	2.64
Captain/Pilot	. . . . .			. . . . .			. . . . .			. . . . .			. . . . .			. . . . .		

NOTE: If an employee works in more than one higher title during the entire pay period, he shall be paid the additional differential applicable to the lower of the two higher titles.

(4) Hourly rates for work performed over 8 hours in a day, 32 hours in one week, 198 days a year and work performed on a legal paid holiday

Effective	Deckhand/ Marine Stoker			Marine Oiler/ Water Tender			Mate			Asst. Captain			Marine Engineer			Chief Marine Engineer			Captain/Pilot		
	7/1/70	9/1/71	9/1/72	7/1/70	9/1/71	9/1/72	7/1/70	9/1/71	9/1/72	7/1/70	9/1/71	9/1/72	7/1/70	9/1/71	9/1/72	7/1/70	9/1/71	9/1/72	7/1/70	9/1/71	9/1/72
	$8.79	9.66	10.635	9.15	10.065	11.07	10.245	11.265	12.39	11.205	12.33	13.56	11.445	12.585	13.845	12.285	13.515	14.865	12.69	13.965	15.36

The City of New York

OFFICE OF LABOR RELATIONS
250 BROADWAY, NEW YORK, N. Y. 10007

HERBERT L. HABER, *Director*

July 18, 1972

Mr. Anthony DiMaggio
Director, New York Inland & Harbor Contracts
District No. 1 - Pacific Coast District
Marine Engineers Beneficial Association
752 Broadway
New York, N. Y. 10003

Dear Mr. DiMaggio:

RE: 1970-1973 Agreement between
The City of New York and
District No. 1 - PCD, MEBA.

The Impasse Panel in its clarification of Report and Recommendations in case BCB-101-71 recommended an increase of the uniform allowance for Licensed Officers in the 1970-1973 collective agreement between the City of New York and District No. 1 - Pacific Coast District, MEBA.

This letter will serve as a confirmation of our agreement to submit to the Pay Board the Impasse Panel's recommendations including the recommendation calling for a $15.00 increase in uniform allowance. The City, however, reserves its right to call to the Pay Board's attention the fact that while all of the other economic items contained in the agreement conform to the basic pattern of the Harbor settlement, the recommendation dealing with uniform allowance does not and is, therefore, insupportable. However, in the event that the Impasse Panel's recommended uniform allowance is approved by the Pay Board, the City will abide by the Pay Board's decision in that regard and the recommended increase shall become part of the 1970-1973 agreement between us. In that case, Article XVII (Uniform Allowance) shall be deemed to be amended to read as follows:

Licensed Officers covered by this agreement shall be reimbursed for the cost of uniforms for the period shown below:

	July 1, 1970	Sept. 1, 1971	Sept. 1, 1972
Pilot	$85.00	$ 85.00	$ 85.00
Captain	85.00	85.00	85.00
Assistant Captain	85.00	85.00	85.00
Mate	85.00	85.00	85.00

In the event the Pay Board disapproves of the $15.00 increase in the uniform allowance, the present uniform allowance of $70.00 per year for each category of Licensed Officer shall remain unaffected.

Please signify your agreement to the terms of this letter agreement by signing in the space provided below and return a signed copy to this office fully executed.

Sincerely yours,

HERBERT L. HABER
Director

Anthony DiMaggio

District No. 1
Pacific Coast District Marine
Engineers Beneficial
Association

PLAINTIFF'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

PLAINTIFFS' EXHIBIT 8

TWO CONTRACTS (UNLICENSED)

(1) 1967-1970

(2) 1970-1973

/ Other

Unlicensed 31ha

1967-1970

This indenture made the day of March 1968 between the CITY OF NEW YORK, hereinafter referred to as the "First Party" and the undersigned DECKHAND, MARINE OILER, WATER TENDER AND MARINE STOKER employed by the City of New York in the Department of Marine and Aviation hereinafter referred to as the "Second Parties":

W I T N E S S E T H:

WHEREAS, the First Party is a municipal corporation organized under the laws of the State of New York, and

WHEREAS, the Second Parties were and still are employed by the First Party under the title of Deckhand, Marine Oiler, Water Tender and Marine Stoker, and

WHEREAS, certain differences between the parties herein have arisen with respect to rates of wages in the locality of the City of New York, and

WHEREAS, it is the desire of the parties herein to compromise their differences by the acceptance of certain rates of pay to be paid to the Second Parties both retroactively and prospectively for the below period in full settlement of services rendered and to be rendered.

NOW, THEREFORE IT IS MUTUALLY AGREED AS FOLLOWS:

1. The First Party hereby agrees for the period between July 1, 1967 and June 30, 1970 to provide for the continued employment by the First Party of each of the Second Parties in his respective title at the respective annual compensation as follows:

TITLE	AGREED ANNUAL RATES EFFECTIVE JULY 1, 1967
Deckhand	$ 8118
Marine Stoker	8118
Marine Oiler	8446
Water Tender	8446

It is understood and agreed the Agreed Annual Rates hereinabove set forth are based on a 30 hour week and shall constitute compensation in full for the regular work week as practiced in the Department of Marine and Aviation with respect to the operation of ferryboats; more specifically, four (4) eight hour tours per week. It is further understood and agreed that any regular work week may include a Saturday or Sunday and that the Agreed Annual Rates hereinabove set forth include compensation in full therefor. It is further understood and agreed that the Agreed Annual Rates hereinabove set forth includes eleven (11) legal holidays, of which eight (8) are paid holidays and three (3) are non paid holidays. The Agreed Annual Rates hereinabove set forth include payment for the following indicated paid legal holidays:

New Years Day
Washington's Birthday
Decoration Day
Independence Day
Labor Day
Veterans Day
Thanksgiving Day
Christmas Day

2. It is also understood and agreed, that in addition to the annual compensations referred to in paragraph "1" hereinbefore, that the First Party hereby also agrees to provide to each signatory Second Party in his respective title additional payment in cash as hereinbelow set forth for each (8 hour) day actually worked by him on the following holidays. Such payment shall preclude the grant of any additional time off.

New Years Day	Labor Day
Washington's Birthday	Veterans Day
Decoration Day	Thanksgiving Day
Independence Day	Christmas Day

Title	Legal Holiday Rate
Deckhand	$ 44.00
Marine Stoker	44.00
Marine Oiler	45.76
Water Tender	45.76

3. Daily overtime performed after the regular assigned tour of duty shall be compensated in cash at the rates set forth below for each hour so worked in increments of ½ hour. Such pay shall preclude the grant of any additional time off.

Title	Hourly Overtime Rate
Deckhand	$ 5.50
Marine Stoker	5.50
Marine Oiler	5.72
Water Tender	5.72

4. For purposes of compensation of temporary replacements for regular employees, payment shall be made for such work, on a daily or hourly basis as the case may be, for each respective category as follows:

The following daily (8 hour) rates for all shifts including Saturdays and Sundays shall apply:

a. Rates applicable for the first 30 hours of any calendar week:

Title	Hourly Rate	Daily Rate-8 Hour Tour
Deckhand	$ 3.66	$ 29.33
Marine Stoker	3.66	29.33
Marine Oiler	3.81	30.51
Water Tender	3.81	30.51

b. Work performed in excess of 30 hours per week and/or in excess of 8 hours on a Legal Holiday as defined in Paragraph 1 hereof shall be paid at the hourly rate set forth in Paragraph 3 hereof.

c. Temporary replacements for regular employees shall be paid time and one half of the daily rate as set forth in Paragraph 4a hereof for work on the following legal holidays in addition to one day's (8 hr) holiday pay at straight time. Such payment shall preclude the grant of any additional time off.

New Years Day	Washington's Birthday
Decoration Day	Independence Day
Labor Day	Veterans Day
Thanksgiving Day	Christmas Day

5. The First Party further agrees during the term of this agreement to provide additional compensation in the amount of ten cents (10¢) per hour to such signatory Second Parties in the title of Deckhand who are qualified by possession of the appropriate Radio Operators license issued by the Federal Communications Commission, to operate radio-telephone equipment. Such additional compensation shall be limited to the hours during which the employee performs duties which will require and include operation of such radio-telephone equipment.

6. The First Party further agrees to provide to each signatory Second Party payment in cash in the amount of $150 for loss of clothing and personal effects resulting from the sinking of a ferry boat, such payment to be in full compensation for such loss whether the loss is greater or less than $150.

7. The First Party further agrees during the term of this agreement to provide a sum not to exceed the annual amounts hereinafter set forth for each incumbent Second Party employed on an annual basis, whether permanent or provisional, as a Deckhand, Marine Oiler, Water Tender, and Marine Stoker, or the prorata share thereof for each such Second Party during the term of this agreement for a period less than the full term of this agreement, for the purpose of furnishing, as provided in the annexed agreement hereinafter referred to, certain supplementary benefits for the period of employment of such signatory by the City during the term of this agreement as defined in the annexed separate agreement entered into between the City of New York and Local 333, United Marine Division, National Maritime Union, AFL-CIO. The payments as above indicated shall be remitted by the First Party to Local 333, Beneficial Fund for New York City Employees subject to the annexed separate agreement entered into between the City of New York and Local 333, United Marine Division, National Maritime Union, AFL-CIO, for the benefit of each incumbent Second Party signatory to this agreement and further subject to periodic audit by the Comptroller of the City of New York.

Period	Annual Amount
July 1, 1967 to June 30, 1968	$145
July 1, 1968 to June 30, 1969	170
July 1, 1969 to June 30, 1970	170

8. The First Party further agrees to continue to provide to each incumbent signatory to this agreement, a supplemental benefit, during the terms of this agreement, respecting the assumption by the City of New York of an added contribution not to exceed a total of five percent to the Pension System as outlined by the resolutions adopted by the Board of Estimate and by Executive Orders of the Mayor relative to pension contributions, in order to provide for the increased take home pay as provided by the terms of the resolution aforesaid.

9. It is understood and agreed that the terms and conditions of employment during the affected periods for signatory Second Parties, in addition to the compensation referred to in paragraph "1" herein, shall include pension benefits, more fully described hereinabove, on a per annum basis in the same manner and on the same basis heretofore in use in the Department of Marine and Aviation employing the Second Parties. Annual leave benefits, sick leave benefits, and other authorized absences with pay, shall be granted as follows:

Annual leave not to exceed a total of five (5) weeks per annum shall be granted as follows:

Vacation-with-pay benefits not exceeding four (4) weeks and one day annually, to be provided on a per annum basis.

plus

Personal Business, not to exceed four (4) days per annum.

Sick leave shall be cumulative up to one hundred eighty (180) days, earned, and accrued on the basis of one (1) day for each month of employment.

Such annual leave and sick leave benefits shall be applicable to permanent and provisional employees in permanent per annum positions only.

Sick leave may be expended by employee upon having accrued same.

Time off with pay, shall be granted to regular employees, not to exceed three (3) work days in case of death in the immediate family. Immediate family shall be defined for this purpose as spouse, natural, foster, step parent, mother-in-law, father-in-law, child, brother or sister; or any relative residing in the household.

Two (2) hours of credit (at straight time) shall be granted for purposes of voting on Regular General Election Day.

In the event that the Office of the Mayor issues an order to the various department heads that City employees be granted a day off or alternate days off, the same policy shall be applied to the operating crews of the Ferry Service.

10. The City agrees to pay in cash to all signatory employees both permanent and provisional, who resign, are laid off or go on leave of absence except those employees who may die while in service or those whose services are terminated while charges are pending, for all work actually performed including overtime, and earned vacation, at their respective annual or daily rates of pay as the case may be.

11. The First Party further agrees to provide to each signatory Second Party, terminal leave in accordance with existing rules governing the grant of terminal leave to other city employees in the Department of Marine and Aviation now receiving terminal leave.

12. It is also understood and agreed that during the term of this agreement the First Party will attempt to retain all permanent employees. If curtailment because of reduced number of runs become necessary, the First Party will make every effort for re-employment in vacancies or replacing provisionals in assignments for which such permanent employees are eligible, at the rates and working conditions prevailing in the department in which such permanent employees are re-employed. However, no such curtailment shall become effective without prior discussions with the affected employee's representatives.

13. In the event that the City of New York introduces newly designed vessels to the Ferry Service, the City of New York agrees to negotiate a manning scale, wages and working conditions and any other problems that may arise only for such vessels. This is not to be construed as a reopening of the wage agreement affecting all other employees on existing vessels.

14. The rates referred to herein are not to be construed as fixations of prevailing wages under Section 220 of the Labor Law, the same having been agreed upon in compromise as compensation in full for services rendered and to be rendered to The City of New York for the periods covered in this agreement.

15. Simultaneous with payment herein, each of the Second Parties agrees to:

(a) Withdraw his Labor Law claim or claims or other claims seeking additional compensation for all periods covered by this agreement;

(b) Refrain from filing a Labor Law Claim or other claims for any period covered by this agreement and specifically for the period to expire on June 30, 1970;

(c) Waive his right to receive prevailing rates or other adjustments of wages for the effective periods of this agreement;

(d) Extend to the First Party his general release in the form now in use by the City of New York for similar purposes;

(e) Discontinue any and all actions and/or Article 78 proceedings or other proceedings heretofore commenced by him or on his behalf for the effective period of this agreement;

(f) Waive any and all rights and remedies with respect to wage supplements now provided by Chapter 750 of the Laws of 1956 except as herein otherwise provided, for the periods of this agreement;

(g) Waive any and all interest on all differentials of basic rates of wages and supplemental benefits. It is expressly understood that such waiver shall include the waiver of any right to interest payments to subdivision 8c of Section 220 of the Labor Law (1 1967, c, 502, 1).

16. The terms and conditions of this agreement are subject to approval by the Mayor of the City of New York; otherwise the same shall be of no force and effect whatever.

The City of New York

BY _____
City Director of Labor Relations

FIRST PARTY

_____
SECOND PARTY

_____
SECOND PARTY

Indicated Agreement 1970-1973

This indenture executed the day of December 1971 between the CITY OF NEW YORK, hereinafter referred to as the "First Party" and the undersigned DECKHAND, MARINE OILER, WATER TENDER AND MARINE STOKER employed by the City of New York in the Department of Marine and Aviation, Transportation Administration hereinafter referred to as the "Second Parties".

W I T N E S S E T H:

WHEREAS, the First Party is a municipal corporation organized under the laws of the State of New York, and

WHEREAS, the Second Parties were and still are employed by the First Party under the title of Deckhand, Marine Oiler, Water Tender and Marine Stoker, and

WHEREAS, certain differences between the parties herein have arisen with respect to rates of wages in the locality of the City of New York, and

WHEREAS, it is the desire of the parties herein to compromise their differences by the acceptance of certain rates of pay to be paid to the Second Parties both retroactively and prospectively for the below period in full settlement of services rendered and to be rendered, and

WHEREAS, the parties agreed to the substance of this indenture prior to August 16, 1971, and now desire to reduce the terms of their agreement to writing.

NOW, THEREFORE IT IS MUTUALLY AGREED AS FOLLOWS:

1. The First Party hereby agrees for the period between July 1, 1970 and August 31, 1973 to provide for the continued employment by the First Party of each of the Second Parties in his respective title, for 206 (8 hour) days per annum of which 198 (8 hour) days are work days, at the respective annual compensation as follows:

	AGREED ANNUAL RATES - EFFECTIVE		
TITLE	7-1-70	9-1-71	9-1-72
Deckhand, Marine Stoker	$ 9,950.28	$10,935.12	$12,038.82
Marine Oiler, Water Tender	10,357.80	11,393.58	12,531.24

It is understood and agreed the Agreed Annual Rates hereinabove set forth are based on a 30 hour week and shall constitute compensation in full for the regular work week as practiced in the Department of Marine and Aviation with respect to the operation of ferryboats; more specifically, four (4) consecutive eight hour tours per week. It is further understood and agreed that any regular work week may include a Saturday or Sunday and that the Agreed Annual Rates hereinabove set forth include compensation in full therefor. It is further understood and agreed that the Agreed Annual Rates hereinabove set forth include eleven (11) legal holidays, of which eight (8) are paid holidays and three (3) are non paid holidays. The Agreed Annual Rates hereinabove set forth include payment for the following indicated paid legal holidays:

New Years Day
Washington's Birthday
Decoration Day
Independence Day
Labor Day
Veterans Day
Thanksgiving Day
Christmas Day

2. It is also understood and agreed, that in addition to the annual compensation provided for in Paragraph "1" herein, that the First Party hereby agrees to provide to each signatory Second Party in its employ an additional payment in cash as hereinbelow set forth for each (8 hour) day actually worked by him on the following holidays. Such payment shall preclude the grant of any additional time off.

New Years Day — Labor Day
Washington's Birthday — Veterans Day
Decoration Day — Thanksgiving Day
Independence Day — Christmas Day

	Legal Holiday Rate-Effective		
Title	7-1-70	9-1-71	9-1-72
Deckhand, Marine Stoker	$79.32	$77.28	$85.08
Marine Oiler, Water Tender	77.20	80.52	88.56

3. Daily overtime performed after the regular assigned tour of duty shall be compensated in cash at the rates set forth below for each hour so worked in increments of 1/2 hour. Such pay shall preclude the grant of any additional time off.

	Hourly Overtime Rate-Effective		
Title	7-1-70	9-1-71	9-1-72
Deckhand, Marine Stoker	$8.79	$9.66	$10.635
Marine Oiler, Water Tender	9.15	10.065	11.07

4. For purposes of computation of temporary replacements for regular employees, payment shall be made for such work, on a daily or hourly basis as the case may be, for each respective category as follows:

The following daily (8 hour) rates for all shifts including Saturdays and Sundays shall apply:

a. Rates applicable for the first 40 hours of any calender week:

	Hourly Rate- Effective		
Title	7-1-70	9-1-71	9-1-72
Deckhand, Marine Stoker	$5.86	$6.44	$7.09
Marine Oiler, Water Tender	6.10	6.71	7.38

	Daily Rate- Effective		
Title	7-1-70	9-1-71	9-1-72
Deckhand, Marine Stoker	$46.88	$51.52	$56.72
Marine Oiler, Water Tender	48.80	53.68	59.04

b. Work performed in excess of 40 hours per week and/or in excess of 8 hours on a Legal Holiday as defined in Paragraph 1 hereof shall be paid at the hourly rate set forth in Paragraph 3 hereof.

c. Temporary replacements for regular employees shall be paid time and one half of the daily rate as set forth in Paragraph 4a hereof for work on the following legal holidays in addition to one day's (8 hr) holiday pay at straight time. Such payment shall preclude the grant of any additional time off.

New Years Day — Washington's Birthday
Decoration Day — Independence Day
Labor Day — Veterans Day
Thanksgiving Day — Christmas Day

5. The First Party further agrees during the term of this agreement to provide additional compensation in the amount of ten cents (10¢) per hour to such signatory Second Parties in the title of Deckhand who are qualified by possession of the appropriate Radio Operators license issued by the Federal Communications Commission, to operate radio-telephone equipment. Such additional compensation shall be limited to the hours during which the employee performs duties which will require and include operation of such radio-telephone equipment.

6. The First Party further agrees to provide to each signatory Second Party payment in cash in the amount of $150 for loss of clothing and personal effects resulting from the sinking of a ferry boat, such payment to be in full compensation for such loss whether the loss is greater or less than $150.

7. The First Party further agrees, providing the certified union complies with the terms and conditions of Personnel Order No.86/70 dated November 30,1970, during the term of this agreement to provide a sum not to exceed the annual amounts hereinafter set forth for each incumbent Second Party employed on an annual basis, whether permanent or provisional, as a Deckhand, Marine Oiler, Water Tender, and Marine Stoker, or the prorata share thereof for each such Second Party during the term of this agreement for a period less than the full term of this agreement, for the purpose of furnishing, as provided in the annexed agreement hereinafter referred to, certain supplementary benefits for the period of employment of such signatory by the City during the term of this agreement as defined in the annexed separate agreement entered into between the City of New York and Local 333, United Marine Division, National Maritime Union, AFL-CIO. The payments as above indicated shall be remitted by the First Party to Local 333, Beneficial Fund for New York City Employees subject to the annexed separate agreement entered into between the City of New York and Local 333, United Marine Division, National Maritime Union, AFL-CIO, for the benefit of each incumbent Second Party signatory to this agreement and further subject to periodic audit by the Comptroller of the City of New York.

Effective	Annual Amount
July 1, 1970	$170
January 1, 1971	175
January 1, 1972	250

8. The First Party further agrees to continue to provide to each incumbent signatory to this agreement, a supplemental benefit,during the term of this agreement, respecting the assumption by the City of New York of an added contribution not to exceed a total of 4% to the Pension System as outlined by resolutions adopted by the Board of Estimate and by Executive Orders of the Mayor relative to pension contributions, in order to provide for the increased take-home pay as provided by the terms of the resolutions aforesaid; and as they may be revised, amended or eliminated during the term of this agreement or thereafter.

9. It is understood and agreed that the terms and conditions of employment during the affected periods for signatory Second Parties, in addition to the compensation referred to in Paragraph "1" herein, shall include pension benefits, more fully described hereinabove, on a per annum basis in the same manner and on the same basis heretofore in use in the Department of Marine and Aviation employing the Second Parties. Annual leave benefits, sick leave benefits, and other authorized absences with pay, shall be granted as follows:

Annual leave not to exceed a total of five (5) weeks per annum shall be granted as follows:

Vacation-with-pay benefits not exceeding four (4) weeks and one day annually, to be provided on a per annum basis.
plus
Personal Business, not to exceed four (4) days per annum.

Sick leave shall be cumulative up to one hundred eighty (180) days, earned, and accrued on the basis of one (1) day for each month of employment.

Such annual leave and sick leave benefits shall be applicable to permanent and provisional employees in permanent per annum positions only.

Sick leave may be expended by employee upon having accrued same.

Time off with pay, shall be granted to regular employees, not to exceed three (3) work days in case of death in the immediate family. Immedidate family shall be defined for this purpose as spouse, natural, foster, step parent, mother-in-law, father-in-law, child, brother or sister; or any relative residing in the household.

Two (2) hours of credit (at straight time) shall be granted for purposes of voting on Regular General Election Day.

In the event that the Office of the Mayor issues an order to the various department heads that City employees be granted a day off or alternate days off, the same policy shall be applied to the operating crews of the Ferry Service.

10. The City agrees to pay in cash to all signatory employees both permanent and provisional, who resign, are laid off or go on leave of absence except those employees who may die while in service or those whose services are terminated while charges are pending, for all work actually performed including overtime, and earned vacation, at their respective annual or daily rates of pay as the case may be.

11. The First Party agrees to provide to the beneficiary or estate of signatory Second Parties who die while employed by the First Party, payment in cash for the following:

(a) All unused accrued annual leave to a maximum of 54 days credit.

(b) All unused accrued compensatory time, earned subsequent to March 15, 1968, verifiable by official agency records to a maximum of two hundred (200) hours.

12. The First Party further agrees to provide to each signatory Second Party, terminal leave in accordance with existing rules governing the grant of terminal leave to other city employees in the Department of Marine and Aviation now receiving terminal leave.

13. The First Party further agrees during the term of this agreement to provide a uniform allowance not to exceed the annual amount hereinafter set forth for each signatory Deckhand employed only on a per annum basis, or the pro-rata share thereof for each such signatory Second Party during the term of this agreement as follows:

	Annual Amount
July 1, 1970 to August 31, 1973	$45

14. It is also understood and agreed that during the term of this agreement the First Party will attempt to retain all permanent employees. If curtailment because of reduced number of runs become necessary, the First Party will make every effort for re-employment in vacancies or replacing provisionals in assignments for which such permanent employees are eligible, at the rates and working conditions prevailing in the department in which such permanent employees are re-employed. However, no such curtailment shall become effective without prior discussions with the affected employee's representatives.

15. In the event that the City of New York introduces newly designed vessels to the Ferry Service, the City of New York agrees to negotiate a manning scale, wages and working conditions and any other problems that may arise only for such vessels. This is not to be considered as a reopening of the wage agreement affecting all other employees on existing vessels.

16. The rates referred to herein are not to be construed as fixations of prevailing wages under Section 220 of the Labor Law, the same having been agreed upon in compromise as compensation in full for services rendered and to be rendered to The City of New York for the periods covered in this agreement.

17. Simultaneous with payment herein, each of the Second Parties agrees to:

(a) Withdraw his Labor Law claim or claims or other claims seeking additional compensation for all periods covered by this agreement;

(b) Refrain from filing a Labor Law Claim or other claims for any period covered by this agreement and specifically for the period to expire on August 31, 1973.

(c) Waive his right to receive prevailing rates or other adjustments of wages for the effective periods of this agreement;

(d) Extend to the First Party his general release in the form now in use by the City of New York for similar purposes;

(e) Discontinue any and all actions and/or Article 78 proceedings or other proceedings heretofore commenced by him or on his behalf for the effective period of this agreement;

(f) Waive any and all rights and remedies with respect to wage supplements now provided by Chapter 750 of the Laws of 1956 except as herein otherwise provided, for the periods of this agreement;

(g) Waive any and all interest on all differentials of basic rates of wages and supplemental benefits. It is expressly understood that such waiver shall include the waiver of any right to interest payments due pursuant to subdivision 8c of Section 220 of the Labor Law (L.1967, c, 502, 1).

18. The terms and conditions of this agreement are subject to approval by the Mayor of the City of New York; otherwise the same shall be of no force and effect whatever.

The City of New York

City Director of
Labor Relations

BY _____
FIRST PARTY

_____
SECOND PARTY

_____
SECOND PARTY

PLAINTIFF'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
9

PLAINTIFFS' EXHIBIT 9

Letter dated August 18, 1969

326a

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

Address reply to
COMMANDANT
U.S. COAST GUARD (CCC-2)
WASHINGTON, D.C.
20591

5730

18 AUG 1969

Honorable John M. Murphy
House of Representatives
Washington, D. C. 20515

Dear Mr. Murphy:

This is in reply to your letter of 5 August 1969 transmitting a letter from Mr. Henry O. Hanrahan concerning his wages as a marine engineer on the Governors Island Ferry.

Title 5, U. S. Code 5342, provides that the pay of officers and members of crews of vessels shall be fixed and adjusted from time to time as nearly as is consistent with public interest in accordance with prevailing rates and practices in the maritime industry. The rate of pay of our ferryboat personnel, who are covered by this law, has been of great concern to the Coast Guard, and much time has been spent on studies to determine the appropriate rate of pay within the purview of the Title.

In our attempt to establish a pay rate which is consistent with the prevailing rates in the New York area and in the public interest, three employees from our Headquarters and two from the Third Coast Guard District conducted a thorough survey of the rates of pay and working practices in the harbor area in July 1969. In order to gain a more complete picture, Local 333, National Maritime Union was invited to nominate two of our ferryboat personnel as union representatives in the study, but declined. The survey revealed two firm facts:

(1) There is no prevailing rate for the maritime industry; and

(2) All wages are established through collective bargaining with the local maritime unions.

As a result of the survey, the District Commander, Third U. S. Coast Guard District was delegated authority to adjust or fix wages. You may be assured that wage schedules which are within the intent of the law will be established by the District.

It is hoped that this information will be helpful in answering the correspondence from Mr. Hanrahan. It has been a pleasure to be of service to you.

Sincerely yours,

P. E. TRIMBLE
Vice Admiral, U. S. Coast Guard
Acting Commandant

PLAINTIFF'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
10 ID

PLAINTIFFS' EXHIBIT 10

MEMORANDUM DATED NOVEMBER 16, 1973

Form DOT F 1320.1 (1-67)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

DATE: November 16, 1973

SUBJECT: Special Wage Schedule - Maritime Employees at Governors Island, New York

In reply refer to:

FROM : Director of Personnel and Training

TO : Chief, Civilian Personnel Division

Plf's Def's Ex. 2 .....For Ident
S.D.N.Y. 1974. Donna A. Metz

Attached is a copy of the Civil Service Commission decision concerning our request for an exception to the 5.5% wage increase guideline as it applies to our July 1973 adjustment for subject wage schedule. The Civil Service Commission has refused to approve our request for an exception. A copy of this decision should be given to Local 333, NMU by Coast Guard Third District or Base New York.

We have discussed this decision with the Civil Service Commission. While this was fruitless from the standpoint of obtaining favorable reconsideration, we do have a better understanding of their attitude and appraisal of the New York ferryboat situation. It is well that all concerned fully understand the matter.

Fundamentally, the Commission considers that a true tandem relationship, consistent with the spirit of the Executive Order and their regulations, is represented only when a long time direct tie, government wage schedule to specific industry rates, can be demonstrated. If, for example, we were still adopting the 69th Street Ferry wage rates for application to employees on the Governors Island ferry, the Commission would accept this as a long standing tandem relationship. However, since this long standing reference point has gone out of business, the Commission sees no way for us to find a substitute which in their view satisfies the E.O. 11639 requirement. They concede further that they see no activity in the New York Harbor which they consider sufficiently similar to the Governors Island ferry for wage setting purposes and conclude that a wage survey such as we are doing probably provides the best approach to wage setting in New York Harbor for our purposes.

"With the background just furnished, the Commission's treatment of the three conditions examined when reviewing requests for tandem increases becomes more understandable." It is the CSC position that all three conditions specified in E.O. 11639 must be met. First, they say the Governors Island ferryboat will probably never satisfy

the first requirement concerning tandem relationahip. Secondly, they acknowledge the fact the Pay Board has acted on pay increases for other employees in New York harbor, and finally, they conclude we do not have a serious problem about recruiting and retaining staff to operate the Governors Island ferries.

The Civil Service Commission decision has the impact of compelling us to pay unlicensed ferryboat employees rates that are 30¢ per hour below what our survey shows to be appropriate; similarly, we are paying licensed personnel rates that are 40¢ per hour below what our last survey shows to be appropriate. At some future date, when current wage controls are relaxed, it will be necessary to pick up this lag in wage rates applied to the ferryboat employees. The potential costs associated with this wage gap need to be kept in mind as a future funding issue.

R. J. Alfultis

Attachment

AFFIDAVIT OF HARRY GROSSMAN IN SUPPORT OF MOTION TO DISMISS AFFIRMATIVE DEFENSES

UNITED STATES DISTRICT COURT :
SOUTHERN DISTRICT OF NEW YORK
- X

RONALD H. WHELAN, et al., 73 Civ. 2819 (CMM)

Plaintiffs,

-against- AFFIDAVIT

CLAUDE S. BRINEGAR, Secretary of THE DEPARTMENT OF TRANSPORTATION, et al.,

Defendants.
- X

STATE OF NEW YORK)
: ss.:-
COUNTY OF NEW YORK)

HARRY GROSSMAN, being duly sworn, deposes and says:

That he is the attorney for the plaintiffs in the above entitled action and is fully familiar with all of the facts, circumstances, pleadings and proceedings heretofore had herein. That he respectfully submits this Affidavit in support of this application which seeks an order pursuant to Rule 12 of the Federal Rules of Civil Procedure striking and dismissing the affirmative defenses contained in the Answer of the defendants herein in paragraphs numbered "8", "9" and "10" thereof on the grounds that the three alleged affirmative defenses contained therein do not present bona fide questions of law or fact, and that none of said three affirmative defenses state a proper or valid defense to the Complaint herein.

This affidavit is made by your deponent instead of by any of the plaintiffs because of the legal and technical nature of this application.

This action was instituted by the service of a Summons and Complaint, copies of which are annexed hereto as Exhibit "A". Thereafter, an Answer was interposed on behalf of the defendants, a copy of which is annexed hereto as Exhibit "B". Since then, two stipulations have been entered into, one adding an additional party plaintiff that had been inadvertently omitted and the other correcting the name of the Secretary of the Department of Transportation. Copies of said Stipulations are annexed hereto as Exhibits "C" and "D".

This is an action which seeks to establish a proper pay schedule for the plaintiffs, all of whom are officers and crew members and employees of the Governors Island ferry operation. This action seeks to obtain both for the past and in the future the wage rates for the plaintiff employees which have been established for comparable officers and crewmen classification in the City of New York Staten Island Ferry schedule. In fact, it is specifically admitted in the Answer of the defendants in this action in paragraph marked "5" thereof that on July 3, 1966, a Treasury Department Wage Board stated "that in the future wage rates of such employees would be adjusted by the same cents per hour increases in basic rates for comparable offices and crewman classifications in the City of New York Staten Island Ferry schedule."

Briefly, it is contended in the Complaint herein that both in the past few years as well as currently, the plaintiffs have not been receiving the wage rates to which they are entitled under the policy acknowledged as above as well as under Title 5, U.S. Code, Sec. 5342. It will be demonstrated that the plaintiffs have taken all necessary and available administrative steps and that

no further action is possible outside of the instant lawsuit to protect the plaintiffs and to correct the failures to pay them what they are clearly and legally entitled to receive.

In their Answer, the defendants have seen fit to make various denials as well as admissions and have also interposed three separate and distinct affirmative defenses which are the subject matter of this motion.

The said three affirmative defenses are as follows:

"FIRST AFFIRMATIVE DEFENSE

8. This Court lacks subject matter jurisdiction.

SECOND AFFIRMATIVE DEFENSE

9. The complaint fails to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

10. Plaintiffs have not exhausted their administrative remedies."

FIRST AFFIRMATIVE DEFENSE

The first affirmative defense alleges that this Court lacks subject matter jurisdiction. From a mere reading of the Complaint, it is obvious that a Federal question is involved. The plaintiffs are all employees of the Federal Government. They are employed by the United States Coast Guard which at different times has been an integral part of a different government department. It is contended the plaintiffs herein have suffered a legal wrong, namely the failure to pay them the correct wage scale as a result of action taken by various Federal agencies having jurisdiction over the subject matter. The action taken by the various agencies has been taken pursuant to Title 5, U. S. Code, Sec. 5342 and

also under Executive Order 11639 of 11 January 1972. Therefore, the plaintiffs are clearly entitled to judicial review thereof under Title 5, U.S. Code, Sec. 702 which reads as follows:

> "A person suffering legal wrong because of agency action or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."

Furthermore, all of the defendants are officers of established Federal agencies or departments. The instant legal action is the proper form of proceeding for judicial review under Sec. 703, Title 5, U.S.C.A. Accordingly, there is no basis for the defendants' Answer to claim that this Court lacks jurisdiction over the subject matter of this action. This Court is the only avenue of review available to the plaintiffs. Therefore, this first affirmative defense should properly be stricken and dismissed.

SECOND AFFIRMATIVE DEFENSE

The second affirmative defense alleges that the Complaint fails to state a claim upon which relief can be granted. This affirmative defense is equally as spurious as the first affirmative defense alleged in the defendants' Answer. As heretofore noted, in connection with the first affirmative defense, Sec. 702, Title 5, U.S.C.A. specifically gives this Court the right to review agency action which has adversely affected or aggrieved the plaintiffs in this case under Sec. 5342, Title 5, U.S.C.A.

The Complaint sets forth the procedure which the agencies involved should have followed and clearly indicates a violation and disregard by them of the directives they are supposed to follow in setting the wage scale of the plaintiffs. The procedure

claimed as proper in the Complaint is actually admitted and acknowledged in the Answer of the defendants. The Complaint specifically sets forth that the defendants have failed and refused to pay them the proper wage scale thereby damaging the plaintiffs and making them aggrieved parties.

A reading of the Complaint shows that the same sets forth a valid and legal cause of action against the defendants in a concise and orderly fashion. However, the second affirmative defense herein by the mere conclusory statement, that the Complaint fails to state a claim upon which relief can be granted is skimpy and scanty and should properly be stricken and dismissed.

THIRD AFFIRMATIVE DEFENSE

The third affirmative defense alleges that the plaintiffs have not exhausted their administrative remedies. This is an incorrect conclusion. Various plaintiffs at various times have personally and by representatives made complaints to various agencies about the failure of the agencies involved to arrange for the proper wage scales. Promises have been made. Studies have been undertaken. Surveys have been completed. And after all of this alleged activity over several years, only a minor adjustment was made to the said wage scales.

A request by the Department of Transportation to the Civil Service Commission to approve a higher wage increase was denied on August 28, 1972. It was this denial that caused the plaintiffs to decide to seek judicial review.

After this action was instituted another request was made by the Department of Transportation on July 27, 1973. A copy

of the letter containing said request is annexed hereto and marked Exhibit "E". On October 24, 1973, the Civil Service Commission again denied the request. A copy of said denial is annexed hereto and marked Exhibit "F".

As far back as June 11, 1971, one of the plaintiffs, FRANCIS B. McCOMB, complained to the General Accounting Office which in a letter under said date referred him to 5 U.S.C. 5342. A copy of said communication is annexed hereto and marked Exhibit "G".

Many of the plaintiffs have made representations to their Congressman concerning the wage situation which is the subject matter of this lawsuit. In each case said Congressmen communicated with the United States Coast Guard and received responses indicating that surveys and studies were being conducted but no results were forthcoming even though more than a reasonable period of time has elapsed. Annexed hereto and marked Exhibit "H" are several of the replies made to Congressmen by the United States Coast Guard.

Accordingly, it is obvious that all administrative remedies have been exhausted. There has been a complete and direct failure to follow the policy enumerated by the Treasury Department Wage Board on July 3, 1966 as the same is admitted in paragraph marked "5" of the Answer of the defendants. While there has been one increase of 5.5%, the wage rates of the plaintiffs are far below the schedule paid to the comparable officers and crewmen classifications of the Staten Island Ferry in New York City.

There are no other administrative remedies available to the plaintiffs. They have been patient, pushed around

and have no alternative but judicial review. The latest pronouncement is a Memorandum dated Nov. 16, 1973 issued by the Department of Transportation, a copy of which is annexed hereto and marked Exhibit "I". Certainly this Memorandum clearly indicates that there is nothing further that the plaintiffs can do administratively.

In view of the above, it is clear that the plaintiffs have exhausted their administrative remedies and that the third affirmative defense has no basis in fact or in law and should therefore be stricken and dismissed.

WHEREFORE, it is respectfully prayed that the three affirmative defenses interposed in the Answer of the Defendants herein be stricken and dismissed in their entirety.

Harry Grossman
Harry Grossman

Sworn to before me this

day of January, 1974.

FRANCES L. PINKOWITZ
Notary Public, State of New York
No. 60-3103835
Qualified in Westchester County
Commission Expires March 30, 1975

EXHIBIT C, ANNEXED TO AFFIDAVIT OF HARRY GROSSMAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- X

RONALD H. WHELAN, et al.,

Plaintiffs,

-against-

PAUL BRINNGARD, Secretary of the Department of Transportation, et al.,

Defendants.
- X

STIPULATION

73 Civ. 3819 (CMM)

IT IS HEREBY STIPULATED by and between the attorneys for the respective parties that the name of RICHARD DARE be and is hereby added as an additional plaintiff in the above entitled action and that said name be and the same hereby is added as an additional plaintiff to paragraph marked "SIXTH" of the complaint.

Dated: New York, N. Y.
November 30, 1973

Harry Grossman
Attorney for Plaintiffs

PAUL J. CURRAN
United States Attorney for the
Southern District of New York,
Attorney for Defendants

By _____
Joel B. Harris
Assistant United States Attorney

SO ORDERED: NOV. 30, 1973

S/ CHARLES M. METZNER.
U. S. D. J.

EXHIBIT D. ANNEXED TO AFFIDAVIT OF HARRY GROSSMAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

RONALD H. WHELAN, et al.,

Plaintiffs,

-against-

PAUL BRINNGARD, Secretary of the Department of Transportation, et al.,

Defendants.

----------x

STIPULATION

73 Civ. 2819 (CMM)

IT IS HEREBY STIPULATED by and between the attorneys for the respective parties that the name of CLAUDE S. BRINEGAR, as Secretary of Transportation be and is hereby substituted for the name PAUL BRINNGARD, as Secretary of Transportation, both in the caption of the above action as well as in paragraph marked "SEVENTH" of the complaint.

Dated: New York, N.Y.

November 30, 1973

Harry Grossman
Attorney for Plaintiffs

PAUL J. CURRAN
United States Attorney for the
Southern District of New York.
Attorney for Defendants

By _____
Joel B. Harris
Assistant United States Attorney

SO ORDERED: NOV 30, 1973

/s/ CHARLES M. METZNER
U. S. D. J.

EXHIBIT E, ANNEXED TO AFFIDAVIT OF HARRY GROSSMAN

OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

July 27, 1973

Mr. Raymond Jacobson
Director, Bureau of Policies and Standards
U.S. Civil Service Commission
1900 E Street, N.W.
Washington, D.C. 20415

Dear Mr. Jacobson:

Recently the Department conducted its annual survey of the prevailing maritime rates in the New York Harbor area to establish appropriate wage increases for Coast Guard ferryboat employees at Governor's Island, New York. The results of this survey reveal the prevailing maritime wage rates in the New York Harbor have increased well beyond the 5.5% limitation placed on wage increases for federal government employees. Accordingly, it is requested that the full prevailing wage increase developed by our survey be authorized on the basis of its tandem relationship to the maritime industry in the New York Harbor. Our justification for this request is predicated on the following pertinent points:

- The New York Harbor maritime private sector labor contracts provided for a final 10% increase for the period April 1, 1972, to March 31, 1973, and these increases have been approved by the Pay Board.

- The increasing spread between private sector maritime wage rates and the DOT rates will make it increasingly difficult to attract replacement employees to fill vacancies, particularly those requiring licensed employees. Without ferryboat service, Coast Guard operations on Governor's Island would cease; this is the sole source of transportation for every employee on the island.

- The Commission has approved a 9.43% increase (retroactive to April 1, 1972) in the Harbor Boat Schedule issued by the Department of Defense. We understand this approval was based on a tandem relationship with the increases granted New York Harbor tug boat employees. We point this out for several reasons: (1) our 1972 similar request was denied; (2) tug boat companies are included in our survey; and, (3) approving a tandem relationship increase for one government agency with maritime employees and disapproving it for another in the same wage area creates a situation interpreted by our employees as inequitable, and one which cannot be satisfactorily explained to our unions.

A comparison of the 1968 rates, rates established in 1972, the 5.5% increase authorized in 1973, and the rates our survey conclusions support are shown as follows:

	1968 Rates	1972 Rates	1973 5.5% Increase	1973 Survey Rates
Deckhand	4.56	4.81	5.07	5.37
Oiler	4.68	4.94	5.21	5.51
Engineer	6.13	6.47	6.82	7.22
Master	6.36	6.71	7.08	7.49

The 1973 survey rates shown above represent a 10.13% increase over the 1972 rates and reflect the rates DOT would authorize if not restricted by the 5.5% guideline. This is comparable to the increase authorized for Department of Defense in the same area.

We ask your prompt and earnest consideration of this request for a tandem relationship approval so the proper 1973 survey increase may be installed. If there are any further discussions that will help in arriving at your decision, we will be glad to arrange a meeting at any time. For your information, a copy of the new schedule reflecting the 5.5% increase is enclosed.

William H. Wesp
Acting Director of
Personnel and Training

Enclosure

EXHIBIT F, ANNEXED TO AFFIDAVIT OF HARRY GROSSMAN

UNITED STATES CIVIL SERVICE COMMISSION
BUREAU OF POLICIES AND STANDARDS
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

YOUR REFERENCE

OCT 24 1973

Mr. William A. Wesp
Acting Director of Personnel
and Training
Office of the Secretary
of Transportation
Washington, D.C. 20590

Dear Mr. Wesp:

This is in further reply to your letter of July 27, 1973, concerning wage increases for ferryboat employees of the Coast Guard at Governor's Island, New York.

As noted in your request, Chairman Hampton's letter dated August 28, 1972, informed you that the Commission had not approved as an exception to the 5.5 percent guideline an earlier proposed adjustment for the licensed and unlicensed ferryboat employees of the Coast Guard at Governor's Island, New York. In fact, it was concluded that none of the three conditions for exception outlined in Executive Order 11639 were met.

After reviewing the material accompanying your request and additional information supplied by a member of your staff, we are still unable to find any basis for approving the additional percentage increase requested over 5.5 percent for ferryboat employees of the Coast Guard at Governor's Island, New York.

The first condition for exception as outlined in E.O. 11639 - that a tandem relationship exists between a Federal pay schedule for an employee unit and pay increases granted in an activity in the private sector - has not been met. No evidence was presented that the pay practice for these ferryboat employees has been identical as to the timing and amount of general increases for a closely related group of private maritime employees.

The second condition - the Pay Board has permitted a pay increase for the activity in the private sector which is in excess of the guidelines - has been met. On February 5, 1973, the Pay Board approved a 10 percent second year pay adjustment increase for hourly rated maritime employees in New York City to be effective April 1, 1972. This Pay Board case was No. 2322.

MERIT PRINCIPLES ASSURE
QUALITY AND EQUAL OPPORTUNITY
1883-1973

Again we cannot view the third condition - a comparable increase is essential to the continued operation of the Government service concerned - as being met. No additional information has been presented to support this condition. In fact, out of a total of 12 employee separations in calendar year 1972, no vacancies remain to be filled at the present time.

Exceptions to the 5.5 percent guidelines are only made when all three of the conditions outlined in E.O. 11639 are met. Since only one condition has been met, the Commission cannot approve as a exception to the 5.5 percent guideline the proposed adjustment for the licensed and unlicensed ferryboat employees of the Coast Guard at Governor's Island, New York.

Sincerely yours,

Raymond C. Weissenborn
Chief, Pay Policy Division

EXHIBIT G, ANNEXED TO AFFIDAVIT OF HARRY GROSSMAN

SETTLEMENT CERTIFICATE

UNITED STATES
GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

In correspondence please refer to:
Division: Claims
Claim No.: Z 2389523

JUN 11 1971
(Date)

Mr. Francis B. McComb
41 Walton Street
Brentwood, New York 11717

Sir:

Your claim for payment of night differential as a wage board employee of the Department of the Army until June 30, 1966 and thereafter with the Department of Transportation, U. S. Coast Guard, New York, New York, is disallowed for the reasons stated below.

You contend that you are entitled to night differential pay while you were on duty as a civilian employee with the First U. S. Army and also as a civilian employee with the U. S. Coast Guard.

Section 208(8) of the Classification Act of 1949, 5 U.S.C. 5342, excludes officers or members of crews of vessels from receiving compensation under the provisions of the Classification Act. Section 550.101(b) of the Federal Personnel Manual also precludes payment of premium pay benefits of which night differential is a part. Under the provision of 5 U.S.C. 5342 it is mandatory that the compensation for vessel employees be fixed and adjusted from time to time as ~2 yrs- nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry.

Since payment of night differential is not a practice in the maritime industry and inasmuch as there is no authority which would authorize payment, your claim may not be allowed.

Very truly yours,

For the Director, Claims Division

Adjudicator-Authorizer

GAO Form No. 44 (Rev. 6-30-64)
☆ GPO: 1964—O-731-188

EXHIBIT H, ANNEXED TO AFFIDAVIT OF HARRY GROSSMAN

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

Address reply to:
COMMANDANT
U.S. COAST GUARD (CC/94)
WASHINGTON, D.C. 20590
(202) 426-4280

5730

5 APR 1972

Honorable James R. Grover, Jr.
House of Representatives
Washington, D. C. 20515

Dear Mr. Grover:

This is in reply to your letter of 23 March 1972 on behalf of Mr. Alphonso Bommarito, an employee at the Third Coast Guard District, Governors Island, New York.

Mr. Bommarito expressed his belief that the seniority system, which is used to bid for fixed watches, is unfair since total Government service is not used as a basis for computation of seniority. We would like to point out that rules used to determine seniority are the result of a majority vote within Mr. Bommarito's union. Accordingly, since the criteria for seniority are within established practices and are the desire of his union, we feel that this is a union matter rather than one of local management or the Coast Guard. With regard to compensation for the irregular tours of duty served by Mr. Bommarito, a study is being made to adjust pay for such tours of duty which will resolve part of his problem.

With respect to wages, the Coast Guard has consistently acted in good faith. In fact, our first initial pay adjustment to the marine personnel was made as soon as the function was transferred to the Coast Guard in July 1966, and was based on a prior commitment made by the U. S. Army. The last pay adjustment approved in December 1969 was to equate our rates with the increases granted in the private sector. Following the concepts laid down by Title 5, U.S.C. 5342 wherein the wages for marine employees are to be established according to the prevailing rates, and with due consideration for the public interest, a detailed survey has been conducted in the New York Harbor to determine the actual pay rates for positions in the private sector requiring similar qualifications to our marine positions. The results of this study have revealed that there is a need to adjust wages above the 5.5 percent increase granted on 5 March 1972. A request to adjust wages above the current increase is being referred to the U. S. Civil Service Commission for review and their approval.

We trust this information will be of assistance.

Sincerely,

E. L. PERRY
Rear Admiral, U. S. Coast Guard
Acting Commandant

HENRY HELSTOSKI
[illegible] District, New Jersey

COMMITTEES
Veterans' Affairs
[illegible] and Foreign Commerce

336 Cannon House Office Building
Telephone: [illegible]

DISTRICT OFFICES
601 Paterson Avenue
E. Rutherford, New Jersey 07073
Telephone: 939-6000

Congress of the United States
House of Representatives
Washington, D.C. 20515

April 7, 1972

Captain J. H. Bruce
Chief, Congressional Affairs
United States Coast Guard
Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Dear Captain Bruce:

Thank you for your letter dated March 24th, responding to mine of March 15th, 1972.

I appreciate knowing that the Coast Guard has been acting in "good faith." However, the information I have on the subject of the prevailing wage situation for New York Harbor ferryboat operators indicates that the Coast Guard was requested in March 1971 to provide a wage adjustment for its civilian ferryboat personnel to compensate for the wage increases negotiated by city ferryboat operators in early 1970. Your letter did not explain why it took one year to institute a 5.5 percent increase.

Additionally, your letter did not explain how long the current study to "determine if there is a need to adjust wages above the 5.5 percent increase" would take. I would, therefore, appreicate knowing when you anticipate this study will be completed. Since there are only a limited number of city employees whose wage levels need be examined, it seems to me that the Coast Guard should not require much time to complete its study and forward its recommendations, if any, to the Civil Service Commission for approval.

Sincerely,

HENRY HELSTOSKI
Member of Congress

h

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

Address reply to:
COMMANDANT
U.S. COAST GUARD
WASHINGTON, D.C. 20591
(CC794)
xxxx 20590
(202) 426-4280

5730

10 APR 1972

Honorable Lowell P. Weicker, Jr.
United States Senator
1 East Putnam Avenue
Greenwich, Connecticut 06830

Dear Senator Weicker:

This is in reply to your correspondence of 21 March 1972 transmitting a letter from Mr. F. B. Jones in which he expressed dissatisfaction with wages involving Coast Guard Ferryboat personnel.

We would like to point out that it is the policy of the Coast Guard to establish pay rates consistent with prevailing rates in the New York area and in the public interest.

In this respect, the Coast Guard has consistently acted in good faith. In fact, our first initial pay adjustment to the marine personnel was made as soon as the function was transferred to the Coast Guard in July 1966, and was based on a prior commitment made by the U. S. Army. The last pay adjustment approved in December 1969 was to equate our rates with the increases granted in the private sector. Following the concepts laid down by Title 5, U.S.C. 5342 wherein the wages for marine employees are to be established according to the prevailing rates and with due consideration for the public interest, a detailed survey has been conducted in the New York Harbor to determine the actual pay rates for positions in the private sector requiring similar qualifications to our marine positions. The results of this study have revealed that there is a need to adjust wages above the 5.5 percent increase granted on 5 March 1972. A request to adjust wages above the current increase is being referred to the U. S. Civil Service Commission for review and their approval as established under Executive Order 11639 of 11 January 1972.

It is hoped that this information will be helpful in answering the letter from Mr. Jones.

The enclosures to your letter are being returned as you requested.

Sincerely,

GLENN F. YOUNG
Commander, U. S. Coast Guard
Assistant Chief, Congressional Affairs
By direction of the Commandant

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

Address reply to:
COMMANDANT
U.S. COAST GUARD
WASHINGTON, D.C. 20591
(CC/94)
xxx 20590
(202) 426-4280

5730
12 MAY 1972

Honorable Jonathan B. Bingham
House of Representatives
Washington, D. C. 20515

Dear Mr. Bingham:

This is in reply to your correspondence of 19 April 1972 transmitting a letter from Mr. Sergio Bonilla in which he expressed dissatisfaction with wages involving Coast Guard Ferryboat personnel.

We would like to point out that it is the policy of the Coast Guard to establish pay rates consistent with prevailing rates in the New York area and in the public interest.

In this respect, the Coast Guard has consistently acted in good faith. In fact, our first initial pay adjustment to the marine personnel was made as soon as the function was transferred to the Coast Guard in July 1966, and was based on a prior commitment made by the U. S. Army. A pay adjustment approved in December 1969 was to equate our rates with the increases granted in the private sector which resulted in a set of rates representing a overall 25 percent increase retroactive to 25 August 1968. Since wages in the private sector are adjusted every three years, any increase for Coast Guard personnel would tend to follow those increases implemented in the private sector but not necessarily having the same anniversary date, e.g., 25 August 1971 versus 1 July 1970.

In response to a letter requesting a wage increase, Mr. Bonilla's union was advised that their request would be considered upon completion of studies relating to costs and other pertinent factors. This analysis revealed certain legal ramifications that were referred to the General Counsel at the Department of Transportation for resolution. While these matters were being resolved and prior to conducting a survey, President Nixon by Executive Order 11615 directed a 90-day wage freeze. The freeze on the federal establishment continued until 11 January 1972, at which time, the President by Executive Order 11639 authorized pay increases up to 5.5 percent. Accordingly, on the basis of available wage data immediately available in the New York area, an increase of 5.5 percent appeared warranted and was effected on 5 March 1972.

12 MAY 1972

Subj: Reply to Congressman Bingham's ltr of 19 April 1972 Concerning Wage Schedules

A detailed survey in the New York Harbor to determine actual pay rates for positions in the private sector has been completed. Based on the wage data obtained during the survey, we plan to request approval for an additional increase from the U. S. Civil Service Commission. Mr. Bonilla's union, of course, will be apprised of the results.

We trust this information will be of assistance to you.

Sincerely,

GLENN F. YOUNG
Commander, U. S. Coast Guard
Assistant Chief, Congressional Affairs
By direction of the Commandant

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

MAILING ADDRESS:
U.S. COAST GUARD (CC/94)
400 SEVENTH STREET SW.
WASHINGTON, D.C. 20590
PHONE: (202) 426-4280

5730
16 MAY 1972

Honorable James J. Delaney
House of Representatives
Washington, D. C. 20515

Dear Mr. Delaney:

This is in reply to your letter of 1 May 1972 on behalf of Mr. Ronald H. Whelan, an employee at the Third Coast Guard District, Governors Island, New York.

Mr. Whelan expressed his belief that the Coast Guard has not acted in good faith in establishing its pay rates. By law, the heads of individual agencies are required to adjust marine wages from time to time as nearly as is consistent with public interest in accordance with prevailing rates in the maritime industry. With respect to the time element, we have adjusted the wage rates of our ferryboat personnel four times since the Coast Guard took over the operation of the vessels in July 1966.

In the other aspect concerning prevailing rates, there are basically two techniques available to Federal Departments when fixing wage rates for marine personnel. First, where an identical, or virtually identical activity is being operated by private industry in the same area, it is possible to adopt or parallel industry rates. Second, if there is no parallel situation, or if there exists a number of employers who can be representative of the same occupations or industry in the area, then surveys of wages paid in that industry are conducted to establish a basis for establishing pay rates for the Federal employees affected. The latter, is the method used by the Coast Guard to determine prevailing rates in the New York area and to adjust its rates accordingly.

With respect to the alleged inequities about wages paid to Ferry Masters on the Governors Island ferries, we contacted New York City during a wage survey conducted this past March and found the basic hourly pay rates for a Master to be $7.065 per hour and $6.44 per hour for a Deckhand. This information along with other wage data collected is being used as a basis for requesting a further wage adjustment as mentioned in our previous letter to you.

16 MAY 1972

Subj: Reply to Congressman Delaney's ltr of 1 May 1972 Concerning Wage Schedules

It is hoped that this information will be helpful in answering the letter from Mr. Whelan.

Sincerely,

Glenn F. Young

GLENN F. YOUNG
Commander, U. S. Coast Guard
Assistant Chief, Congressional Affairs
By direction of the Commandant

EXHIBIT I, ANNEXED TO AFFIDAVIT OF HARRY GROSSMAN

Form DOT F 1320.1 (1-67)

UNITED STATES GOVERNMENT

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

Memorandum

DATE: November 16, 1973

SUBJECT: Special Wage Schedule - Maritime Employees at Governors Island, New York

In reply refer to:

FROM : Director of Personnel and Training

TO : Chief, Civilian Personnel Division

Attached is a copy of the Civil Service Commission decision concerning our request for an exception to the 5.5% wage increase guideline as it applies to our July 1973 adjustment for subject wage schedule. The Civil Service Commission has refused to approve our request for an exception. A copy of this decision should be given to Local 333, NMU by Coast Guard Third District or Base New York.

We have discussed this decision with the Civil Service Commission. While this was fruitless from the standpoint of obtaining favorable reconsideration, we do have a better understanding of their attitude and appraisal of the New York ferryboat situation. It is well that all concerned fully understand the matter.

Fundamentally, the Commission considers that a true tandem relationship, consistent with the spirit of the Executive Order and their regulations, is represented only when a long time direct tie, government wage schedule to specific industry rates, can be demonstrated. If, for example, we were still adopting the 69th Street Ferry wage rates for application to employees on the Governors Island ferry, the Commission would accept this as a long standing tandem relationship. However, since this long standing reference point has gone out of business, the Commission sees no way for us to find a substitute which in their view satisfies the E.O. 11639 requirement. They concede further that they see no activity in the New York Harbor which they consider sufficiently similar to the Governors Island ferry for wage setting purposes and conclude that a wage survey such as we are doing probably provides the best approach to wage setting in New York Harbor for our purposes.

With the background just furnished, the Commission's treatment of the three conditions examined when reviewing requests for tandem increases becomes more understandable. It is the CSC position that all three conditions specified in E.O. 11639 must be met. First, they say the Governors Island ferryboat will probably never satisfy

the first requirement concerning tandem relationahip. Secondly, they acknowledge the fact the Pay Board has acted on pay increases for other employees in New York harbor, and finally, they conclude we do not have a serious problem about recruiting and retaining staff to operate the Governors Island ferries.

The Civil Service Commission decision has the impact of compelling us to pay unlicensed ferryboat employees rates that are 30¢ per hour below what our survey shows to be appropriate; similarly, we are paying licensed personnel rates that are 40¢ per hour below what our last survey shows to be appropriate. At some future date, when current wage controls are relaxed, it will be necessary to pick up this lag in wage rates applied to the ferryboat employees. The potential costs associated with this wage gap need to be kept in mind as a future funding issue.

R. J. Alfultis

Attachment

Service of two (2) copies of the within JOINT APPENDIX
is admitted this 12th day of March 1976

COPY RECEIVED
Robert B. Fiske Jr.
UNITED STATES ATTORNEY
3/12/75

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